



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner: Stephen J. Castellano

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.192, Appellant submits the following:

I. REAL PARTY IN INTEREST

The real party in interest of Appellant is Entegris, Inc. of Chaska, Minnesota.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences with respect to the application that is the subject of this appeal.

III. STATUS OF CLAIMS

Claims 1-15 are pending. Claim 16 is canceled. Appellant appeals the rejection of claims 1-15.

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IV. STATUS OF AMENDMENTS

Appellant's Amendment After Final Rejection of April 22, 2004, was entered.

V. SUMMARY OF INVENTION

The invention claimed in the present application is a plastic blow-molded drum having a tall chime integrally molded with the top and sidewalls of the drum. Claim 1 requires that the distance from the top of a first fitting in the top of the drum to the top edge of the top chime be sufficient such that components extending 1 and $\frac{1}{4}$ inches above the top of the first fitting are below the top edge of the top chime. Similarly, claim 11 requires that the top edge of the chime be at least 1 $\frac{1}{4}$ inches above the top of the first fitting. Claim 6 requires that the chime extend 1 $\frac{1}{2}$ to 2 $\frac{3}{4}$ inches above a recessed portion in the top wall of the drum and that the distance between the top of the first fitting and the top edge of the chime be at least 1 and $\frac{1}{4}$ inches. The purpose of these claimed limitations is so that the chime projects a sufficient distance above fittings in the top of the drum so that a closure affixed to the fitting does not project above the chime. This tall chime is advantageous in that it provides protection for top ports and connectors on the drum so that multiple drums may be stacked for storage without damaging a closure on the fitting. The integrally molded, one-piece structure of the claimed drum provides strength and simplicity of manufacture.

VI. ISSUES

1. Whether claims 1-15 are unpatentable under 35 U.S.C. § 112 ¶ 1 for failure to comply with the written description requirement.

2. Whether claims 1-3, 6, 7, and 10 are unpatentable over U.S. Patent No. 5,199,570 to McKenzie (McKenzie '570) in view of U.S. Patent No. 4,925,049 to Przytulla (Przytulla '049) and U.S. Patent No. 4,228,122 to Hammes (Hammes '122).
3. Whether claims 4, 5, 8, 9, and 11-15 are unpatentable over McKenzie '570 in view of Przytulla '049 and Hammes '122 in further view of "the admitted prior art" in the specification.

VII. GROUPING OF CLAIMS

Applicant submits that the claims grouped under each ground of rejection appealed stand or fall together.

VIII. ARGUMENT

A. Introduction

The claimed invention is a plastic blow-molded drum having a tall chime integrally molded with the top and sidewalls of the drum. As claimed, the chime projects a sufficient distance above fittings in the top of the drum so that a closure affixed to the fitting does not project above the chime. This tall chime is advantageous in that it provides protection for top ports and connectors on the drum so that multiple drums may be stacked for storage without damaging a closure on the fitting. The integrally molded, one-piece structure of the claimed drum provides strength and simplicity of manufacture.

Applicant respectfully submits that the claims now pending are clear, supported in the specification, and are narrowly tailored to the subject matter regarded as the invention. Further, Applicant submits that the current rejections of these claims, as throughout the course of the lengthy prosecution of this case, are based on fundamental misconstructions of the claim

limitations and are not supported by the cited references or any other evidence of record in this case. Applicant respectfully submits in this appeal that if the present claims and the cited references are properly considered and if the objective evidence of non-obviousness provided by Applicant is considered, that the present claims are allowable. Applicant accordingly urges that all of the current rejections be reversed and that this case be passed to issue as a United States patent.

B. Background

As background for the arguments that follow, a brief recitation of the prosecution history of the present application is in order. The application that is the subject of this appeal was filed on September 21, 2001, and is a continuation of U.S. Utility Patent Application No. 09/541,871, now abandoned, which was in turn a continuation-in-part of U.S. Utility Patent Application No. 08/982,671, filed December 2, 1997. That original application resulted in the issuance of U.S. Patent No. 6,045,000 on April 4, 2000. For ease of reference, Applicant has attached to this brief selected portions of the record of this case as Appendix Exhibits A-P.

A first office action in the present application was issued March 21, 2002, rejecting inter alia the three independent claims in the application as obvious, and therefore unpatentable, over a single reference, U.S. Patent No. 5,217,142 to Schutz. See Appendix, Ex. A, p. 3. After receiving this Office Action, Applicants repeatedly attempted by telephone to reach the Examiner then assigned to the case in order to arrange a telephonic interview to obtain clarification of the basis for the rejections and to discuss possible amendments to place the case in condition for allowance. No response to these requests was ever received from the Examiner.

Nevertheless, Applicants responded to the Office Action on July 22, 2002, with an amendment to the claims along with arguments addressing the rejections. Appendix, Ex. B. The arguments included pointing out that Schutz '142 taught or suggested neither a chime with the height relationship of the present invention nor integral molding of the top, sidewalls, and chime of a drum as claimed. *Id.*, pp. 5-6. The amendment further included two declarations under 37 C.F.R. § 1.132 as evidence relevant to the secondary considerations of commercial success and copying of the present invention by competitors, and a further request for an interview with the Examiner. Appendix, Exs. C-D.

Later, on November 6, 2002, a Petition to Make Application Special was filed based on infringement of the pending claims by the copying foreign competitor which had commenced importation of the copied drum into the United States. Appendix, Ex. E. As a result, the application was accorded special status on December 18, 2002. Appendix, Ex. F.

Without any response from the Examiner regarding Applicants repeated request for an interview, a second Office Action was issued on December 31, 2002. Appendix, Ex. G. This Office Action was merely a "cut and paste" repetition of the first Office Action, containing little indication that Applicants' evidence, arguments and amendments had even been entered, let alone considered. There was no response whatsoever to Applicants arguments regarding Schutz '142 and the claimed limitations that it does not teach or suggest. This second Office Action even contained a repeated rejection under 35 U.S.C. § 112 based upon language that was deleted in Applicants' amendment. An original Notice of Appeal was subsequently filed on January 22, 2003.

In a subsequent discussion with Patent Office personnel, Applicant's attorney was informed that the original Examiner was no longer with the Patent Office. It was suggested that a possible course of action in view of the history of the case and lieu of appeal would be to submit a Request for Reconsideration of the amendment. Applicant subsequently did so on July 7, 2003. Appendix, Ex. H. This Request for Reconsideration was accompanied by amendments in an Amendment After Notice of Appeal further clarifying the "integrally molded" feature of the claimed invention. Appendix, Ex. I. Even though the meaning of "integrally molded" is clearly disclosed in the specification, these amendments further specified that the chime, top wall, and the cylindrical wall of the claimed invention are integrally molded with "no welded portions" connecting any of the same. For good measure, Claim 6 was amended to recite that these parts are "integrally molded in one piece", and claim 11 was amended to a product-by-process form specifying that the drum is molded by a process comprising "blow-molding said drum as a one-piece integrally molded body including a cylindrical wall, a top structure, and a bottom structure." An interview with the newly assigned Examiner was solicited in order to facilitate resolution of the case.

Applicant's request for reconsideration was denied on July 29, 2003. Appendix, Ex. J. The stated reasoning for denial was that Applicant's clarifying amendments somehow presented issues "not previously considered," even though the amendments were merely clarifying in nature and added nothing that should not have been contemplated in the previous actions. Further, Applicant's evidence relevant to secondary considerations was summarily dismissed. Again, no response was ever made to Applicant's request for an interview.

Applicant filed a Request for Continued Examination on July 21, 2003 presenting the same amendments as included in the Amendment After Notice of Appeal. Appendix, Ex. K. In response, a non-final Office Action was issued on August 27, 2003, *inter alia* rejecting independent claims 1 and 6 over McKenzie '570 in view of Przytulla '049 and independent product-by-process claim 11 over the same combination of references in view of the "admitted prior art" in the application. Appendix, Ex. L. Inexplicably, even in the face of the "integrally molded in one piece" limitation of claim 6, the "integrally molded" limitations were again ignored entirely. Even more inexplicably, the process limitations of the product-by-process claim 11 were evidently also ignored entirely. In the Office Action, it was merely asserted that the "chime" of the two-piece McKenzie '570 structure "is integrally molded in a separate operation than the top wall and side wall."

Applicants responded to this non-final Office Action with an amendment on January 28, 2004. Appendix, Ex. M. In this amendment, Applicant amended claim 1 to include the current product-by-process limitation reciting that the drum is "made by a process comprising blow molding the at least the cylindrical wall, the top wall, and the top chime together in a single blow molding operation." Claim 6 was amended to the present form by including a "single blow molding operation" limitation, as well as negative limitations reciting that the chime is not part of a separate body attached to the top wall or the cylindrical wall. Claim 11 was amended to include the "single blow molding operation" limitation, and a functional limitation reciting that the chime is for protecting the drum insert and closure from physical damage.

In an Office Action of February 25, 2004, all claims in the application were finally rejected on the grounds now appealed. Appendix, Ex. N. On March 9, Applicant requested an in-person interview with the Examiner to take place March 30 or a telephonic interview to take place at any other mutually convenient time. These requests were once again refused. A subsequent Amendment After Final was filed on April 22, 2004, to place the case in better form for appeal. Appendix, Ex. O. The claim amendments were entered, but Applicant's arguments were once again rejected in an Advisory Action issued May 13, 2004. Appendix, Ex. P.

C. Whether claims 1-15 are unpatentable under 35 U.S.C. § 112 ¶ 1 for failure to comply with the written description requirement.

Claims 1-15 stand rejected based on an alleged failure to adequately describe in the specification the claimed blow molding of the integral chime, top, and sidewall of the drum "in a single blow-molding operation." Applicant respectfully submits that this aspect of the invention is more than adequately described through the incorporation by reference of Hammes '122 in the application, which itself fully describes blow-molding a plastic drum in a single blow-molding operation.

To fulfill the written description requirement, a patent specification must describe an invention and do so in sufficient detail that one skilled in the art can clearly conclude that "the inventor invented the claimed invention." Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572 (Fed. Cir. 1997). Claimed subject matter need not be described in exactly the same terms as used in the claims in order to satisfy the description requirement. Eiselstein v. Frank, 52 F.3d

1035, 1038 (Fed. Cir. 1995). It must simply indicate to persons skilled in the art that as of the application date, the applicant had invented what is now claimed. Id.

Here, in describing methods for constructing the claimed drum, the specification of the present application discloses:

The entire top structure 30 of the drum 24 is integrally formed by way of blow molding. An example of methodology for forming integral chimes during blow molding is disclosed in the prior art; for example, U.S. Pat. No. 4,228,122 to Theo Hammes and assigned to Mauser-Kommandit Gesellschaft, which is fully incorporated herein by reference.

Specification, p. 7, ll. 6-9. Information incorporated by reference is as much a part of the application as filed as if the text was repeated in the application, and should be treated as part of the text of the application as filed. See M.P.E.P. 2163.07(b). Hence, the entire disclosure of Hammes '122 is a part of the present application and supports the claims therein.

The Examiner has responded to Applicants citation of Hammes '122 for support of the "single blow molding operation" limitations by asserting¹ that "there is nothing that distinguishes the blow molding operation as being 'single' in manner." See Appendix, Ex. P, p. 2. This assertion, however, is refuted by the description in Hammes '122:

[T]he thermoplastic parison or tubular member is blown into a mold to form a closed head drum, and during this operation an intermediate form of the roller chimes is produced and, after the blowing operation,

¹ Applicant notes that, paradoxically, the Examiner also asserts that, for the purposes of making an obviousness rejection, Hammes '122 does describe blow molding a drum in a "single blow molding operation." Whether a disclosure satisfies the written description requirement of 35 U.S.C. § 112 is a pure question of fact. Enzo Biochem, Inc. v. Gen-Probe, Inc., 323 F.3d 956, 962-63 (Fed. Cir. 2002). Applicant respectfully submits that it is improper to assert as a factual matter that a reference both describes and simultaneously does not describe the same subject matter, and that one or the other of these assertions should be withdrawn along with the rejection it is alleged to support.

movable parts of the mold are displaced relative to stationary parts, in the axial direction of the drum body, to complete the chimes.

Hammes '122, col. 2, ll. 22-27 [emphasis added]. Importantly, this passage only refers to one "blowing operation" and makes clear that the whole of the "closed head drum" (top and sidewalls) and chimes are formed together by blow molding in that one operation. In Hammes '122, and in other references characterizing Hammes '122, this single blow molding process is distinguished from other drum forming processes wherein "hoops" or "rings" are separately formed in another operation and welded to the parison during blow molding. See Hammes '122, col. 1, ll. 17-21; Przytulla '049, col. 1, ll. 29-39.

Applicant respectfully submits that although Hammes '122 does not contain the exact phrase "single blow molding operation", those of skill in the art would, and have, understood it as describing blow molding a "closed head drum" (top and sidewalls) together with chimes in one ("a single") blow molding operation. Accordingly, Applicant submits that one skilled in the art would conclude that, as of the filing date, Applicants were in clearly possession of the now claimed subject matter, and urges that the rejections of claims 1-15 under 35 U.S.C. § 112 ¶ 1 be reversed.

- D. Whether claims 1-3, 6, 7, and 10 are unpatentable over U.S. Patent No. 5,199,570 to McKenzie (McKenzie '570) in view of U.S. Patent No. 4,925,049 to Przytulla (Przytulla '049) and U.S. Patent No. 4,228,122 to Hammes (Hammes '122).

Independent claims 1 and 6, and their respective dependent claims 2-3 and 7 and 10 were rejected as obvious over McKenzie '570 in view of Przytulla '049 and Hammes '122. Applicant respectfully submits that not only do these cited references fail to teach all

aspects of the invention, but are not properly combinable since the primary reference McKenzie '570 actually teaches away from any combination. Further, the non-obviousness of the claimed invention is demonstrated by secondary consideration evidence, which has never properly been considered by the Office.

1. The cited references do not teach all aspects of the claimed invention.

In the final office action, it is asserted that McKenzie '570 "discloses the invention" except for "the cylindrical side wall" and a "one piece integrally molded structure molded in a single blow molding operation." See Appendix, Ex. N, p. 3. In fact, however, significant aspects of the invention are not taught or suggested in McKenzie '570, or in the other applied references, Przytulla '049 and Hammes '122, and accordingly, these rejections are unsupported.

a. McKenzie '570 does not contain the teachings relied on by the Examiner.

Claim 1 requires that "the distance from the top of the first fitting to the top edge of the top chime is sufficient such that components extending 1 and ¼ inches above the top of the first fitting are below the top edge of the top chime." Similarly, claim 11 requires that the top edge of the chime be at least 1 ¼ inches above the top of the first fitting. Claim 6 requires that the chime extend 1 ½ to 2 ¾ inches above a recessed portion in the top wall of the drum and that the distance between the top of the first fitting and the top edge of the chime be at least 1 and ¼ inches. It is first claimed in the final office action that all of these limitations are taught by McKenzie '570 in that the container disclosed therein has a total height of 20 inches

with a volume of 55 liters and that “a container of this height with the height of the chime as drawn in relation to the height of the top of the first fitting appears to be at least 1 and ¼ inches higher.” See Appendix, Ex. N, p. 3 [emphasis added]. This analysis, however, is based on unsupported assumptions, guesswork, and on dimensions estimated from unscaled patent drawings.

The specification of McKenzie ‘570 states that the container, “particularly the upper flange portions” may be 16 inches by 14 inches to accommodate stacking on a 48 by 42 inch pallet. McKenzie ‘570, col. 5, ll. 38-44. Further, the McKenzie ‘570 specification notes that for the container to have a volume of 55 liters with such dimensions, a height “on the order of 20 inches” is required. Id., ll. 44-46. The office action contains only the most cursory and vague allusion to these dimensions, and it is not explained how these dimensions are used to formulate the instant rejection. It appears that the Examiner may have merely multiplied the two width dimensions (16 by 14 inches), divided this result into 55 liters and subtracted the result from 20 inches to estimate the height of the sleeve above the top wall of the container. Such a calculation, however, relies on an incorrect reading of the supplied information and on unsupported assumptions for variables which are simply not disclosed.

In the first instance, the “upper flange portion” of the container refers to the sleeve structure depicted in the drawings as reference numeral 12 (McKenzie ‘570, col. 4, ll. 28-34), which is not part of the liquid containing, body portion of the container. McKenzie ‘570, col. 2, ll. 54-57. The actual width dimensions of the “container body 11” are not disclosed in the specification, and in fact, may be considerably smaller than the width dimensions of the “upper flange portion 12”, as depicted in Figs. 2-4 of McKenzie ‘570. If the

width dimensions are smaller, a greater height of container body 11 is required for a given volume. In turn, this greater height, subtracted from the 20 inch height dimension, would lead to a lesser height estimate for the sleeve portion.

Further, even if the outside width dimensions of container body 11 were known (and they are not), the wall thickness of the container body is not disclosed in the specification of McKenzie '570, and would have an effect on the internal volume of the container. In short, it is simply not possible to determine the height of the sleeve above the top wall of the container body of McKenzie '570 by the method apparently used by the Examiner without relying on unsupported assumptions for these other undisclosed dimensions.

Moreover, the claims of the present application all have limitations referring to the height of the top of the chime above the **top of the first fitting**. Even if the height of the sleeve above the top wall of the container in McKenzie '570 could be determined from the disclosure, there is no disclosure whatsoever in the specification of the height of the fittings or their relationship to the top of the sleeve. Although the Examiner attempts to estimate a sleeve height dimension from the relative proportions of the drawings (Final Office Action, p. 3, ll. 16-18), such estimates are improper. "Patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." Hockerson-Halberstadt, Inc. v. Avia Group International, Inc., 222 F.3d 951 (Fed. Cir. 2000). The drawings in McKenzie '570 are not disclosed as being drawn to any particular scale or as even being necessarily proportional. Since the specification of McKenzie '570 is completely silent on the relative dimensions of the fittings relative to the top of the sleeve, the drawings may not be relied on for such disclosure either. Based on the foregoing, it

must be concluded that McKenzie '570 does not teach or suggest the claimed limitations regarding the chime height and relative position with regard to the fittings.²

- b. The other cited references do not supply the teachings missing in McKenzie '570.

Neither Pryztulla '049 nor Hammes '122 contains any teaching or suggestion of the positional relationship between fittings on the top of the drum and the top of the chime claimed in the present invention. In fact, Pryztulla '049 teaches that the “carrying and transport ring 2” is to be located below the end face 3 of the drum (Pryztulla '049, col. 3 ll. 17-19), thereby teaching away from locating the top of a chime above the top wall and fittings in the top wall as in the claimed invention.

- c. The Examiner's reliance on common knowledge is improper and incorrect.

It is alternatively asserted in the office action that a 1 and ¼ inch height difference between the top edge of the chime and the top of the first fitting would have been reached by “engineering design choice” because “an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack.” Final Office Action, p. 4, ll. 9-13. Here, although not explicitly stated, the Examiner seems to claim reliance on common knowledge or well-known prior art. Such reliance is improper in this case, and in any event, misplaced.

² Applicant also disputes the Examiner's contention in the Final Office Action that the drum of McKenzie '570 has a “chime integrally molded in a separate operation.” In view of the fact that “integrally molded” as used in the instant application means molded in one continuous piece, (see Hammes '122, col. 1, ll. 12-16; col. 2, ll. 15-21), the Examiner's assertion is an oxymoron and evidences a fundamental misconstruction of the claim language. The chime simply cannot simultaneously be both integral and separate, severely undermining any conceivable rationale for combining McKenzie '570 with the other cited references, as it outlined hereinbelow.

Official notice, unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known are capable of instant and unquestionable demonstration as being well-known. In re Ahlert, 424 F.2d 1088, 1091 (CCPA 1970). Here, as previously pointed out by Applicant, stacking stability is but one of many competing considerations in the design of drums. Appendix, Ex. O, p. 7. Although stacking stability may counsel higher chime heights, other considerations, such as ease of use, access to fittings, cost of material, space usage, and so forth, may counsel lower chime heights. If there were not such competing considerations and if stacking stability were the paramount consideration in drum design, it would seem preferable to increase the chime height to fully envelop a drum stacked above. Yet, there is no evidence in the record of this case that any such design has ever been attempted, let alone so commonly used as to be “instantly and unquestionably” demonstrated.

Further, Applicant submits that there is no evidence that chime height is necessarily even a principal factor in stacking stability. It is common knowledge and common sense that other factors, such as the size of the base, the ratio of drum height to diameter, and the relative location of the center of gravity may have a greater effect on stacking stability than chime height. Hence, the “facts” or “common knowledge” advanced by the Examiner, far from being “capable of instant and unquestionable demonstration as being well-known,” are in fact instantly and unquestionably refuted in the face of common knowledge and reasoning. As a result, official notice is improper in this case, and the rejection should not be sustained.

Pursuant to M.P.E.P. 2144.04(C), Applicant challenged the factual assertion of the Examiner that a 1 and ¼ inch height difference between the top edge of the chime and the

top of the first fitting would have been reached by “engineering design choice” because “an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack,” and properly requested that the Examiner provide a reference supporting the same. Appendix, Ex. O, p. 7. Accordingly, the Examiner was required to provide documentary evidence in the next office action if the rejection was to be maintained. M.P.E.P 2144.04(C) (citing 37 C.F.R. 1.104(c)(2); In re Zurko, 258 F.3d 1379, 1386 (Fed. Cir. 2001). The Examiner has refused to do so. Appendix, Ex. P. Such refusal is clearly improper and leaves the Examiner’s assertion without proper factual support in the record. This alternative rejection should be stricken as a result.

Based on the foregoing, Applicant submits that the cited references do not teach all aspects of the invention, and that in fact, the factual record of this case is devoid of any evidence showing that the claimed invention was known or would have been obvious over the prior art at the time of the invention. Accordingly, Applicant respectfully requests that the rejection of these and all claims dependent therefrom be reversed.

2. The applied references are not properly combinable since the primary reference McKenzie ‘570 teaches away from the combination

Even if the applied references taught or suggested all of the claimed limitations (which they do not, as demonstrated above), these references are not properly combined. A prior art reference must be considered as a whole, including portions that would lead away from the claimed invention. See W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). McKenzie ‘570 discloses that advantages of the container shown therein are that:

4. The sleeve arrangement separately attached to the container provides an effective handle/lifting device which can be simply manufactured and attached to the container by the strap and interlocking channel arrangement.

[and]

5. The stacking can be obtained simply by the side walls sliding inside the inside surface of the sleeve due to the presence of the upper band 21 which ensures that the sleeve is carried at a position spaced slightly outward from the side walls of the container itself.

McKenzie '570, col. 5, ll. 24-37. In these passages, McKenzie '570 explicitly teaches the desirability of a separately formed and attached sleeve arrangement. One of skill in the art would accordingly be discouraged by these passages from looking to drums having integrally molded chimes such as Przytulla '049 and Hammes '122, since *a fortiori*, these would not offer the stated advantages for the separately formed and attached sleeve. Hence, McKenzie '570 is not properly combined with either Przytulla '049 or Hammes '122.

3. The non-obviousness of the claimed invention is demonstrated by secondary consideration evidence, which has never properly been considered by the Office.

Objective evidence of nonobviousness includes commercial success and copying by others. Custom Accessories, Inc. v. Jeffrey-Allan Industries, Inc., 807 F.2d 955, 960 (Fed. Cir. 1986). Evidence rising out of these so-called "secondary considerations" must always when present be considered en route to a determination of obviousness. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 1538 (Fed. Cir. 1983). Indeed, evidence of secondary considerations may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious in light of the prior art was not. It is

to be considered as part of all the evidence, not just when the decisionmaker remains in doubt after reviewing the art. Id.

Applicant has previously submitted affidavits under 37 C.F.R. 1.132 relevant to showing the secondary considerations of commercial success and copying by competitors. See Appendix, Exs. C-D. Applicant respectfully submits that this evidence clearly establishes the non-obviousness of the present invention.

First, the affidavit of Don Brettingen establishes that the commercial embodiment of the claimed drum is a commercially successful product in the electronic grade chemical container market, with projected sales of over 100,000 drums per year in 2002. See Appendix, Ex. C, p. 2. The required “nexus” between the commercial success of the drum and the claimed invention, is evidenced by paragraphs 3, 4 and 6, of the Brettingen affidavit which state that the extended chime of the present invention is necessary to pass the “drop testing” required for the drums to be usable as a shipping container. See Appendix, Ex. C, p. 2; Custom Accessories, 807 F.2d at 963. As stated therein, without the high-chime feature, the drum would not be usable as a shipping container and would not be attractive to buyers for use in the electronic grade chemical market. Appendix, Ex. C, p. 2. The Brettingen affidavit also provided substantial evidence of copying by competitors (Appendix, Ex. C, pp. 3-4), that considered in combination with the Christensen affidavit (Appendix, Ex. D), supports a conclusion that the commercial embodiment of the drum of the present invention was copied by a foreign competitor at the urging of a customer seeking the advantages of the present invention at a lower price.

The affidavits referred to above were previously submitted to the Office on July 22, 2002. This evidence was summarily dismissed by the Examiner as “conclusionary” and not providing “enough evidence to establish commercial success.” Appendix, Ex. J. The evidence of copying by competitors provided in these affidavits does not appear to have been considered at all, and this evidence was never again considered in the case. Applicant respectfully submits that this evidence of secondary considerations was not accorded due consideration, and requests that it be fully considered in this appeal. In that it provides compelling evidence of the unobviousness of the present invention, Applicant urges that the instant rejections be reversed.

E. Whether claims 4, 5, 8, 9, and 11-15 are unpatentable over McKenzie ‘570 in view of Przytulla ‘049 and Hammes ‘122 in further view of “the admitted prior art” in the specification.

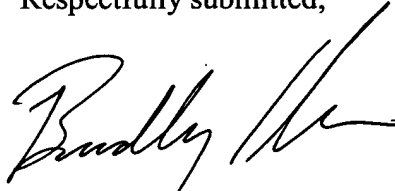
The instant claims were rejected as obvious over the same references cited for claims 1-3, 6, 7, and 10, and for substantially the same reasons. Appendix, Ex. N, pp. 4-5. The “admitted prior art”, namely Figures 1, 3-6 and portions of the specification referring thereto, appears to be cited for the disclosure of a venting closure. The precise basis of this rejection is unclear, however, since claims 11-13 and 15 do not positively claim a closure, while claim 6 included in the previous grouping, does. In any case, Applicant respectfully submits that these claims are allowable for the same reasons as discussed hereinabove for claims 1-3, 6, 7, and 10, and urges that the rejections of the same be reversed.

Appellant's Brief on Appeal Under 37 C.F.R. § 1.192
Application No. 09/960,606

F. Conclusion

Based on the foregoing, Applicant respectfully requests that all rejections of claims 1-15 be reversed, and urges that this case be passed to issue.

Respectfully submitted,



Bradley J. Thorson
Registration No. 52,288

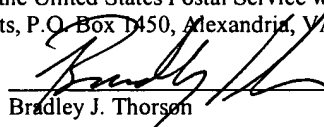
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Date of Deposit


Bradley J. Thorson

PENDING CLAIMS

The following is a clean copy of the claims involved in this appeal:

1. A plastic molded drum having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure, all integrally molded;

the top structure comprising a top wall and a top chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion and adapted to receive components including a closure;

wherein at least the top chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the top chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

wherein the distance from the top of the first fitting to the top edge of the top chime is sufficient such that components extending 1 and ¼ inches above the top of the first fitting are below the top edge of the top chime; and

wherein the drum is made by a process comprising blow molding at least the cylindrical wall, the top wall, and the top chime together in a single blow molding operation.

2. The plastic molded drum of claim 1 wherein the recessed portion is localized around the first fitting.

3. The plastic molded drum of claim 1, further comprising a bottom chime integrally molded so that there are no welded portions connecting the bottom chime with the bottom wall or the cylindrical wall, and wherein the process for making the drum includes blow molding the bottom chime together with the cylindrical wall, the top wall, and the chime.

4. The plastic molded drum of claim 1 wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

5. The plastic molded drum of claim 4 further comprising a cover extending over the vent outlet, and vent valve.

6. A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime with a top edge; wherein at least the chime, the top wall, and the cylindrical wall are integrally molded in one piece in a single blow molding operation, so that the chime is not part of a separate body attached to the top wall or the cylindrical wall, so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

the closure engageable with the first fitting to secure the closure in place on the drum;

the chime extending above the recessed portion 1 ½ to 2 ¾ inches; and

the distance between the top of the first fitting and the top edge of the chime being at least 1 and $\frac{1}{4}$ inches.

7. The combination of claim 6, wherein the recessed portion is localized around the first fitting.

8. The combination of claim 6, wherein the closure is attached to a drum insert with the drum insert attached to the first fitting.

9. The combination of claim 6, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

10. The combination of claim 6, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upwardly extending chime.

11. A blow molded plastic drum made by a process comprising the step of blow molding said drum in a single blow molding operation as a one-piece, integrally molded body including a cylindrical wall, a top structure, and a bottom structure, the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting adapted to receive a drum insert with a closure, and an upwardly extending chime for protecting the drum insert and closure from physical contact, the chime having a top edge, the top edge of the chime extending at least 1 $\frac{1}{4}$ inches above the top of the first fitting.

12. The drum of claim 11, wherein the recessed portion is localized around the first fitting.
13. The drum of claim 11, wherein the recessed portion extends substantially throughout the top wall.
14. The drum of claim 11, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.
15. The drum of claim 11, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upwardly extending chime.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauworth	2267.398US03	6639

7590

03/21/2002

Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100

RECEIVED

MAR 26 2002

PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.

DATE MAILED: 03/21/2002

EXAMINER

POLLARD, STEVEN M

ART UNIT PAPER NUMBER

3727

DOCKETED

Please find below and/or attached an Office communication concerning this application or proceeding.

Date of Office Action 3-21-02
Response due 4-21-02
Per 1 month extension 7-21-02
Per 2 month extension 8-21-02
Per 3rd and FINAL extension 9-21-02

REV



Office Action Summary

Application No.

09/960,606

Applicant(s)

Rauworth, Et. Al.

Examiner

Steven Pollard

Art Unit

3727



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3 - 6, 8 - 11, and 13 - 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (142).

The particular dimensions claimed would have been obvious to one of ordinary skill in the construction of the device of Schutz (142), motivated by the intended use. The employment of a vent valve in the vent hole of the device of Schutz (142) would have been obvious to one of ordinary skill in the art. The employment of a cover over the vent valve and vent outlet would have been obvious to one of ordinary skill in the art, motivated by the wide acceptance of such in the field.

3. Claims 2, 7, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (142) as applied to claims 1, 3 - 6, 8 - 11, and 13 - 15 above, and further in view of Dubois, et. al.

It would have been obvious to one of ordinary skill in the art to have employed the localized recess teaching set forth in Dubois, et. al. in the construction of the device of Schutz (142), producing no new and unobvious results.

4. Claims 5 and 6 - 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, line 1: " the handle " has no proper antecedent basis.

Claim 6, line 7: " the second fitting " has no proper antecedent basis.

5. The references to Rauworth, et. al., Przytulla (049) (639), Bowers, et. al., Mikula, et. al., Hunter, et. al., Clemens, et. al., Schutz (510), Armbruster, Uhlig, Hammes, Reynolds, Pies, Nichols, Bryson, Gay, and Snyder, et. al. have been cited to further show related structure.

Steven M. Pollard

15 March 2002

A handwritten signature in black ink, appearing to read "Steven M. Pollard", with a stylized flourish at the end.

Steven Pollard
Primary Examiner

FORM PTO-892 (REV. 2-92)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 09/960,606	GROUP/ART UNIT 3727	ATTACHMENT TO PAPER NUMBER 4
NOTICE OF REFERENCES CITED				APPLICANT(S) Rauworth, et al.		

U.S. PATENT DOCUMENTS									
*	DOCUMENT NO.	DATE	NAME	CLASS	SUB-CLASS	FILING DATE IF APPROPRIATE			
	A 6045000	4/00	Rauworth, et al.	220	001				
✓	B 5217142	6/93	Schutz	220	001				
✓	C 4201306	5/80	Dubois, et al.	220	5R				
✓	D 5033039	7/91	Przytulla	220	004				
✓	E 4941584	7/90	Bowers, et al.	220	5R				
✓	F 5449087	9/95	Mikula, et al.	220	008				
✓	G 4925049	5/90	Przytulla	220	72				
✓	H 5413240	5/95	Hunter, et al.	220	254				
✓	I 5014873	5/91	Clemens, et al.	220	001				
✓	J 5044510	9/91	Schutz	220	4.05				
✓	K 3294271	12/66	Armbruster	220	5				

FOREIGN PATENT DOCUMENTS									
*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUB-CLASS	PERTINENT SHTS. PP. DWG. SPEC.		
L									
M									
N									
O									
P									
Q									

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)	
R	
S	
T	
U	

EXAMINER Steven M. Ballard	DATE 3/15/02	
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✓ A copy of this reference is not being furnished with this office action, as it was cited
(See Manual of Patent Examining Procedure, section 707.05 (a).) in 09/541,871

FORM PTO-892 (REV. 2-92)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 08/960,606	GROUP PART UNIT 3727	ATTACHMENT TO PAGE NUMBER 4	
NOTICE OF REFERENCES CITED				APPLICANT(S) Rauworth, et al.			

U.S. PATENT DOCUMENTS							
*	DOCUMENT NO.	DATE	NAME	CLASS	SUB-CLASS	FILING DATE IF APPROPRIATE	
✓ A	4117062	9/78	Uhlig	264	94		
✓ B	4228122	10/80	Hammes	264	534		
✓ C	3827595	8/74	Reynolds	220	1R		
✓ D	4767021	8/88	Pies	220	465		
✓ E	5217138	6/93	Nichols	220	403		
✓ F	3167931	2/65	Bryson	602	273		
✓ G	5273181	12/93	Gay	220	601		
✓ H	4257527	3/81	Snyder, et al.	220	72		
I							
J							
K							

FOREIGN PATENT DOCUMENTS									
*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUB-CLASS	PERTINENT CHTS. PP. DWG. SPEC.		
L									
M									
N									
O									
P									
Q									

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)	
R	
S	
T	
U	

EXAMINER STEVEN M. POLLARD	DATE 3/15/02	
--------------------------------------	------------------------	--

✓ A copy of this reference is not being furnished with this office action, as it was cited
 (See Manual of Patent Examining Procedure, section 707.05 (a).) in 09/541,871

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner: S. Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

AMENDMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action of March 21, 2002, (paper no. 4) please amendment to the above-identified patent application is requested.

In the Specification

Please substitute the following amended paragraph(s) and/or section(s):

Page 6, line 24, please delete the word "h2" and insert in its place "h1".

Page 6, line 28, please delete the word "h4" and insert in its place "h2".

Page 7, line 3, please delete the word "h2" and insert in its place "h4".

Page 7, line 5, please delete the word "h2" and insert in its place "h4".

Page 7, line 6, please delete the word "h4" and insert in its place "h2".

Page 7, line 6, please delete the word "h2" and insert in its place "h4".

In the Claims

Please substitute the following amended claims for those currently pending:

1. [Once Amended] A combination plastic molded drum, and closure, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure: the top structure, the cylindrical wall, and the bottom structure all integrally molded;

the top structure comprising a top wall and a chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion,

wherein the distance from the recessed portion to the top of the first fitting is about 1 to 1 ¼ inches and wherein the distance from the recess portion to the top of the top edge of the chime is 1 ½ to 2 ¼ inches; and

the recessed portion positioned such that the first fitting, and the closure do not extend above the top edge of the chime.

2. The combination of claim 1 wherein the recessed portion is localized around the first fitting.

3. The combination of claim 1 wherein the recessed portion extends substantially throughout the top wall.

4. The combination of claim 1 wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

5. [Once Amended] The combination of claim 4 further comprising a cover extending over the vent outlet, and vent valve.

6. [Once Amended] A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure, the top structure and the cylindrical wall integrally molded;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime; the top wall, the recessed portion, the first fitting, and the chime all integrally molded;

the closure engageable with the first fitting to secure the closure in place on the drum; and

the chime extending above the closure when the closure is secured on the drum insert, the chime extending about the recessed portion $1\frac{1}{2}$ to $2\frac{3}{4}$ inches.

7. The combination of claim 6, wherein the recessed portion is localized around the first fitting.

8. The combination of claim 6, wherein the recessed portion extends substantially throughout the top wall.

9. The combination of claim 6, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

10. The combination of claim 6, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upperwardly extending chime.

11. A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure, the top structure and the cylindrical wall integrally molded;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting, and an upwardly extending chime; the top wall, the recessed portion, the first fitting, and the chime all integrally molded; the closure engageable with the second fitting to secure the closure in place on the drum, the chime extending above the closure when the closure is secured on the drum insert, the height of the chime sufficient to allow a closure to extend 1 ¼ inches above the top of the fitting and be below the top edge of the chime.

12. The combination of claim 11, wherein the recessed portion is localized around the first fitting.

13. The combination of claim 11, wherein the recessed portion extends substantially throughout the top wall.

14. The combination of claim 11, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

15. The combination of claim 11, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upperwardly extending chime.

REMARKS

In response to the Office Action mailed March 31, 2002, claims 1, 5 and 6 have been amended. Claims 1-15 remain pending. Reconsideration of the application is respectfully requested.

Amendments to the Specification and Drawings

Various amendments to the specification and Figures 8 and 9 of the drawings have been made to correct typographical errors and to further clarify the claimed invention. No new matter has been introduced by these amendments.

35 U.S.C. § 103 Rejections

Claims 1, 3-6, 8-11 and 13-15 were rejected under 35 U.S.C. 103 as being unpatentable over U.S. Pat. No. 5,217,142 to Schutz. Specifically it was said that the particular dimensions claimed would have been obvious to one of ordinary skill in the art based on the construction of the Schutz 142' device, as motivated by the intended use. Further it was said that the employment of a vent valve in the vent hole device of Schutz 142' would have been obvious to one of ordinary skill in the art, as would the employment of a cover over the vent valve and vent outlet.

It should be noted initially that claim 1 has been amended to correct a typographical error in the claimed range of distance from the recessed portion to the top of the first fitting and to conform to the limits of the range as recited in the specification. This amendment is not intended as a substantive narrowing amendment.

Applicant respectfully traverses this rejection. In order for a claimed invention to be rendered obvious in view of a given reference or combination of references there must be some suggestion or motivation, in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. The Schutz 142' reference, which is the primary and only reference upon which this rejection is based, does not teach or suggest all of the claim limitations contained in the independent claims. First, the Schutz 142' reference does not teach or suggest the desirability of a drum having a recessed portion and with a fitting position such that, when a closure is installed

on the fitting, the closure does not extend above the top edge of the chime of the drum, thereby allowing the chime to serve as protection for the closure during stacking and handling of drums. In fact, FIG. 1 of Schutz 142' shows a drum wherein the fittings themselves stand above the top edge of the chime. In FIGs. 3, 7, 14 and 15 the top of the fitting is shown slightly below the top edge of the chime but at an insufficient distance to allow the installation of a closure so that all portions of the closure remain below the top edge of the chime as required by each independent claim in the present application.

Further, each of independent claims 1, 6 and 11 require a plastic molded drum having an integrally molded top structure, cylindrical wall, and bottom structure. In contrast, the Schutz 142' reference teaches a drum having a separate injection molded lid, and makes no mention of the possibility or desirability of an integrally molded top structure.

Also submitted herewith as further evidence of the unobviousness of the Applicant's invention are Rule 132 declarations setting forth facts related to the secondary considerations of commercial success and copying by competitors. As set forth in the Brettingen declaration, the Entegris drum is a commercially successful product owing, at least in part, to the integral extended chime features as claimed in the present application. In addition, and as further set forth in the Brettingen and Christensen declarations, the claimed features of the drum of the present application have been copied and incorporated into a drum made by a competitor.

Thus, Schutz 142' does not teach or suggest all of the limitations in each of the independent claims as is required for a prima facie case of obviousness. In view of this, and in further view of the additional evidence submitted showing the unobviousness of the claimed invention, Applicant respectfully requests that the Examiner withdraw this rejection.

Next, claims 2, 7 and 12 were rejected under 35 U.S.C. 103 as being unpatentable over Schutz 142' in view of Dubois, et al. '306. In response, Applicant submits that the cited claims depend from independent claims that have, as discussed above, been demonstrated to be

unobvious over the art. Applicant respectfully requests that the Examiner withdraw this rejection.

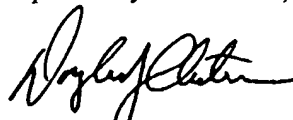
35 U.S.C. § 112 Rejections

Claims 5 and 6-10 were rejected under the second paragraph of 35 U.S.C. 112 for being indefinite, in that the terms "the handle" in claim 5, and "the second fitting" in claim 7 lack proper antecedent basis. In response, Applicant has amended the referenced claims to provide proper antecedent basis for these terms, and now respectfully requests that the Examiner withdraw this rejection.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

In the event that the Examiner deems the application not to be in allowable condition, Applicant earnestly solicits a telephonic interview with the Examiner. In light of Applicant's previously unsuccessful attempts to contact the Examiner to arrange such an interview, Applicant respectfully requests that the Examiner telephone the undersigned to indicate availability for an interview.

Respectfully submitted,



Douglas J. Christensen
Registration No. 35,480

Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-3001

Application No. 09/960,606

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on

Date of Deposit

2/22/02

Douglas J. Christensen

ATTACHMENT
REDLINED AMENDMENT

Specification As Amended

Please substitute the following amended paragraph(s) and/or section(s):

Page 6, line 24, please delete the word "h2" and insert in its place "h1".

Page 6, line 28, please delete the word "h4" and insert in its place "h2".

Page 7, line 3, please delete the word "h2" and insert in its place "h4".

Page 7, line 5, please delete the word "h2" and insert in its place "h4".

Page 7, line 6, please delete the word "h4" and insert in its place "h2".

Page 7, line 6, please delete the word "h2" and insert in its place "h4".

Claims As Amended

Please substitute the following amended claims for those currently pending:

1. [Once Amended] A combination plastic molded drum, and closure, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure: the top structure, the cylindrical wall, and the bottom structure all integrally molded;

the top structure comprising a top wall and a chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion,

wherein the distance from the recessed portion to the top of the first fitting is about 1 to $1 \frac{1}{4}$ [14] inches and wherein the distance from the recessed portion to the top of the top edge of the chime is $1 \frac{1}{2}$ to $2 \frac{1}{4}$ inches; and the recessed portion positioned such that the first fitting, and the closure do not extend above the top edge of the chime.

5. [Once Amended] The combination of claim 4 further comprising a cover extending over [the handle,] the vent outlet, and vent valve.

6. [Once Amended] A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure, the top structure and the cylindrical wall integrally molded;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime; the top wall, the recessed portion, the first fitting, and the chime all integrally molded;

the closure engageable with the first [second] fitting to secure the closure in place on the drum; and

the chime extending above the closure when the closure is secured on the drum insert, the chime extending about the recessed portion 1 ½ to 2 ¾ inches.

Fig. 8

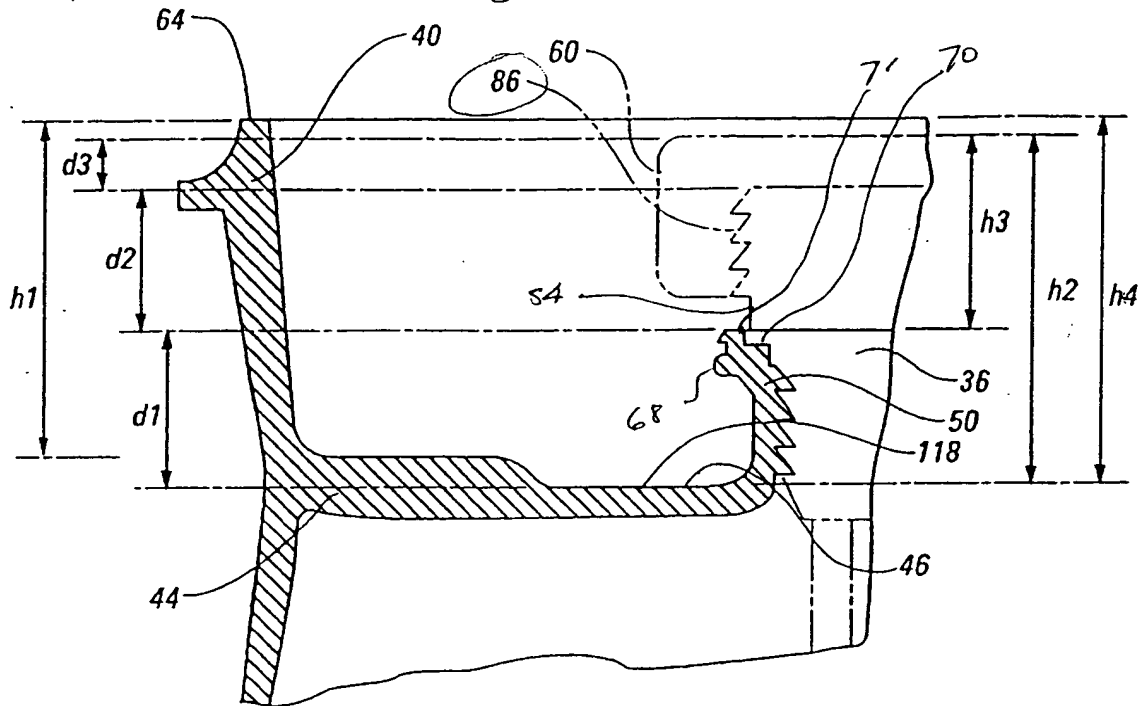
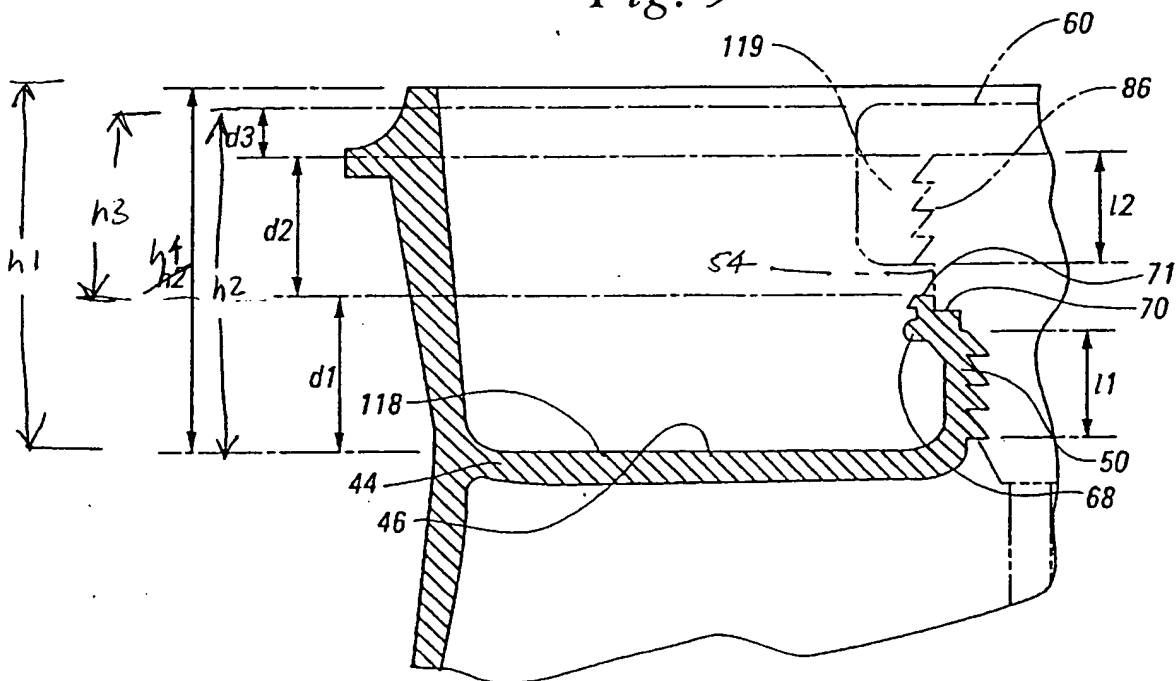


Fig. 9



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398-US-03

Barry L. Rauworth, et. al.

Application No.: 09/960,606

Examiner: S Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

37 C.F.R. §1.132 DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This Declaration is submitted in support of the Amendment filed with this continuation application.

1. I, Don Brettingen, am a Marketing Director for Entegris, Inc. (hereinafter Entegris), manufacturer of the blow molded drum claimed in the present application. I am familiar with the above referenced patent application, as well as with the development, usages and properties of blow molded drums and dispensing systems for use with high purity chemicals.

COMMERCIAL SUCCESS

2. Entegris is the owner of U.S. Patent Nos. 5,108,015 and 6,079,597 which disclose an apparatus and system for quickly and easily connecting drums for chemicals, such as the drum of the present application, to a chemical delivery system such as is used in semiconductor processing. The disclosed connection system may be generally characterized as having two parts; (1) a drum insert portion that mates with the drum bung and that includes a down tube extending to the bottom of the drum, and (2) a dispense head portion. Normally, the

drum insert portion remains attached to the drum during shipping and serves as a closure, while the dispense head portion remains attached to the chemical delivery system.

3. Drums used for shipping hazardous chemicals, such as many of the chemicals used in semiconductor processing, must pass rigorous tests required by the U.S. Department of Transportation for transport within the United States and the United Nations for transport internationally. One of these tests, required by 49 C.F.R. § 178.603 (2001), requires that the drum be inverted and first dropped diagonally on the chime and, in subsequent tests, on the weakest part of the drum.

4. The extended chime height of the drum of the present invention is essential to protect the drum insert portion of the Entegris connection system during U.S. Department of Transportation/United Nations required drop testing as described above. The drum with the Entegris drum insert portion attached would not pass the drop test and, as a result, the drum would not be approved for transport without the extended chime height according to the invention.

5. The drum of the present invention is a commercially successful product in the electronic grade chemical container market. Sales of 100,000 drums are projected for calendar year 2002 at the current rate of sales. In addition, Entegris forecasts annual sales of 250,000 drums within the next three years. The drum of the present invention is used by the largest supplier of electronic grade process chemicals in the United States to package and ship its products.

6. The commercial success of the drum according to the present invention is due, in significant part, to the extended integral high chime feature. As hereinbefore stated, without the extended chime height feature, the drum of the present invention with the Entegris drum insert closure would not be approved for transport by the U.S. Department of Transportation, and hence, would not be attractive for use as a container for electronic grade chemicals.

COPYING BY COMPETITORS

7. Riedel-de Haën AG, was a German chemical company that engaged in the production of various types of industrial chemicals at a manufacturing plant located at Seelze, near Hannover, Germany (hereinafter the Seelze site). In 1996, Riedel-de Haën AG was acquired by and incorporated into AlliedSignal Chemical AG, Seelze. In 1997, Riedel-de Haën was restructured and reorganized within the Specialty Chemicals business unit of the Engineered Materials sector of AlliedSignal.

8. Riedel-de Haën, while a separate company and as a part of AlliedSignal, purchased Entegris products, including the drum of the present invention, for use in packaging and shipping chemical products. As a result, Riedel-de Haën personnel became familiar with the integral extended chime features of the drum of the present invention. At various times while still customers of Entegris, Riedel-de Haën personnel expressed the opinion that Entegris' pricing structure for the drum of the present invention was too high.

9. In 1999, AlliedSignal merged with Honeywell International, Inc. The Seelze site is now owned by Honeywell International, Inc. and is designated Honeywell Specialty Chemicals, Seelze GmbH. On October 29, 2001, Honeywell Specialty Chemicals launched the Riedel-de Haen® product brand of high-purity chemicals for industrial uses.

10. Upon information and belief, Honeywell has arranged with a German company, Richter Kunststofftechnik GmbH & Co. (otherwise known as Rikutec), for the manufacture of a drum with an extended, integrally molded, chime having a height and configuration substantially similar to the drum of the present invention. The Rikutec drum is designated as "UC-Drum", and as of July 22, 2002, was shown on the Rikutec internet web site at the address <http://www.rikutec.de/Behalter/UC-Drum/uc-drum.html>. The Rikutec drum is adapted for use with the Entegris connection system, as well as a similar connection system offered by Rikutec.

11. On January 8, 2001, Honeywell International Specialty Chemicals, Seelze, GmbH obtained approval as a "dangerous goods packaging design type" for the Rikutec drum from the German Federal Institute for Materials Research and Testing. The approval was granted under a certificate number D/BAM 5962 /1H1 for drums carrying the UN-Marking UN1H1/Y1.5/300/.../ D/BAM5962-RIKUTEC.

12. A sample of the Rikutec drum has been obtained by Entegris. The sample Rikutec drum is marked UN1H1/Y1.5/300/___/D BAM596-RIKUTEC. Photographs of the sample Rikutec drum are attached hereto as Exhibits A-C.

13. Based on the information set forth above, I believe that the integral extended chime features of the Rikutec drum were copied from the drum of the present invention.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 7/22/02

By Don Brettingen
Don Brettingen

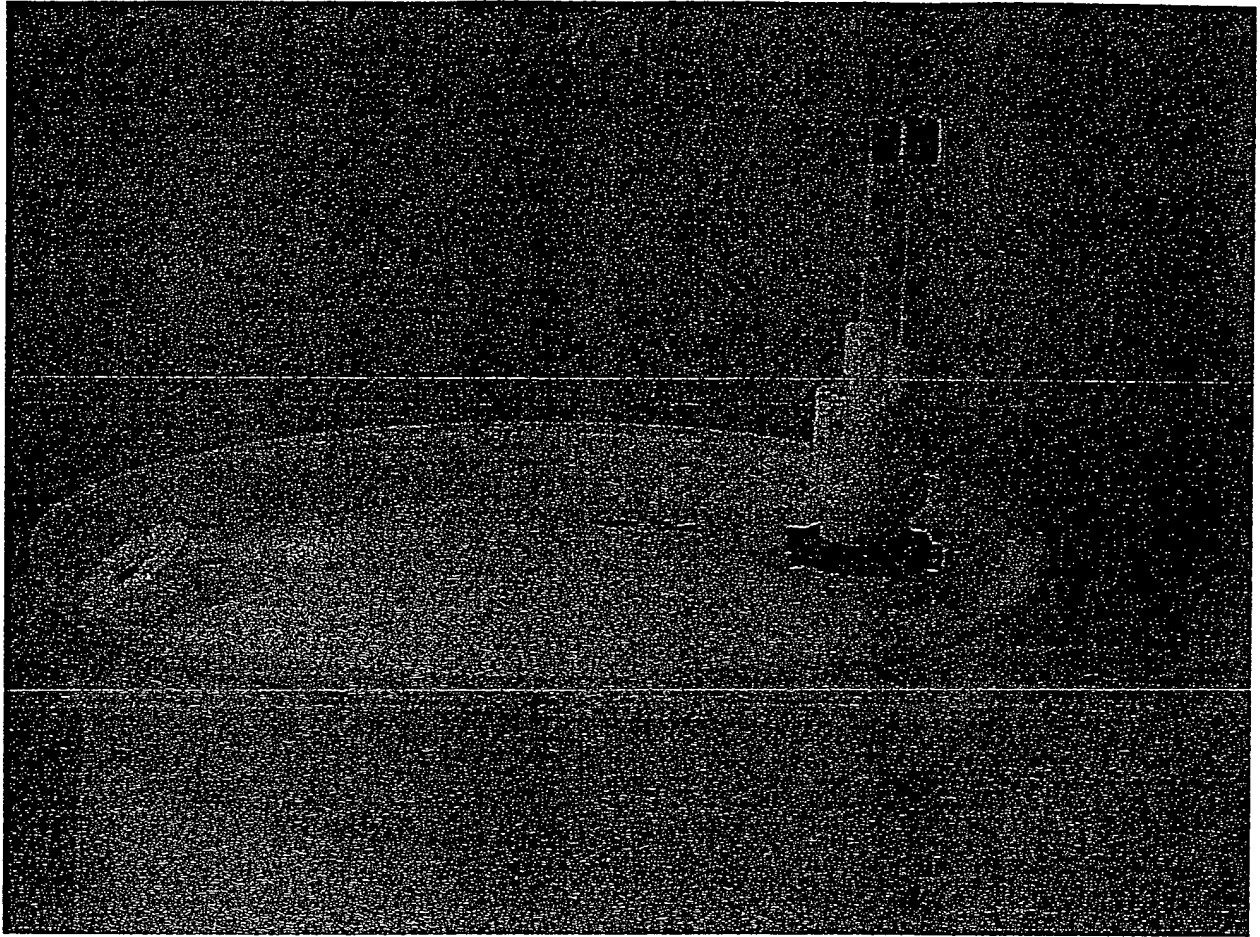


Exhibit A

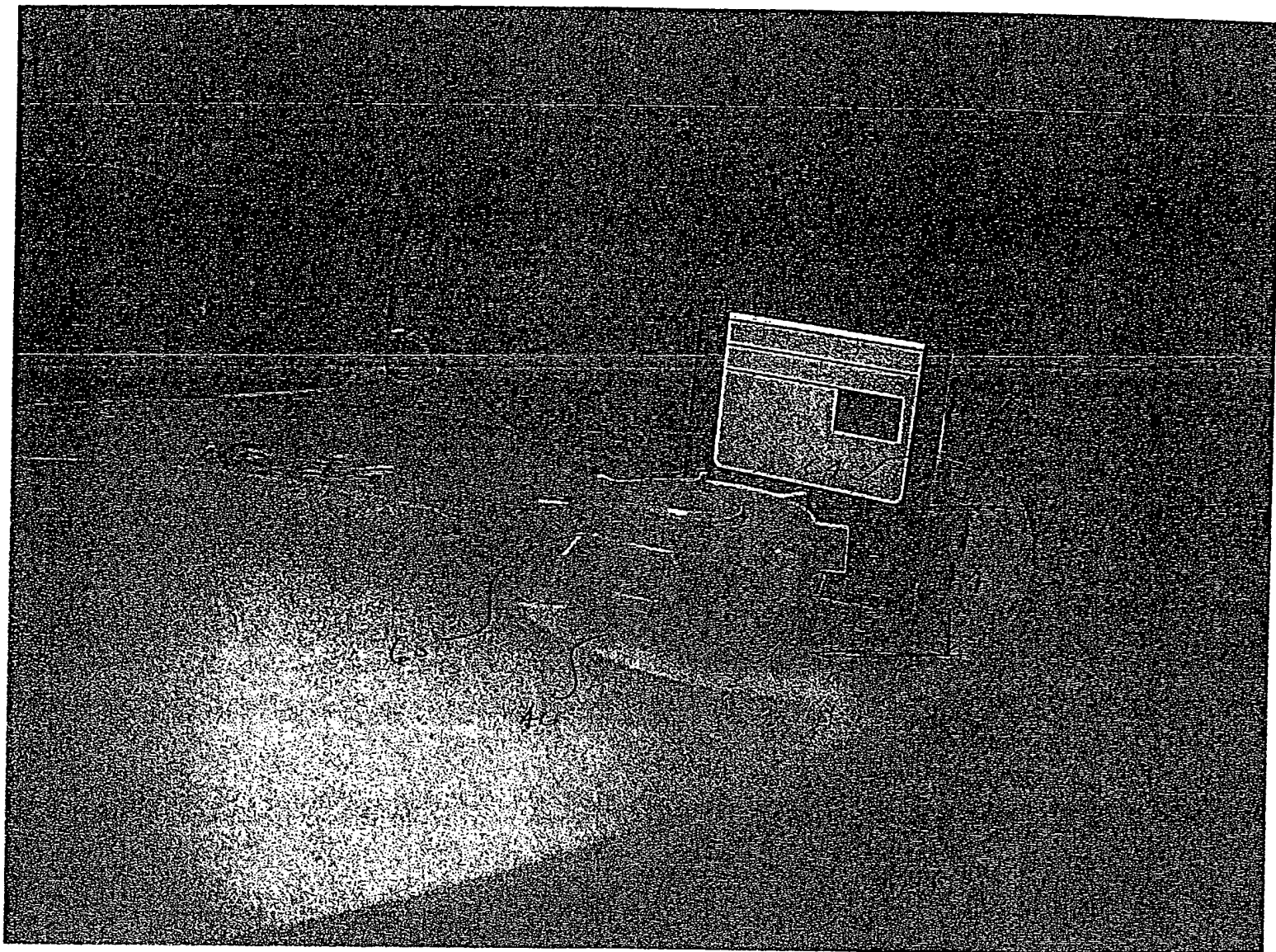


Exhibit B

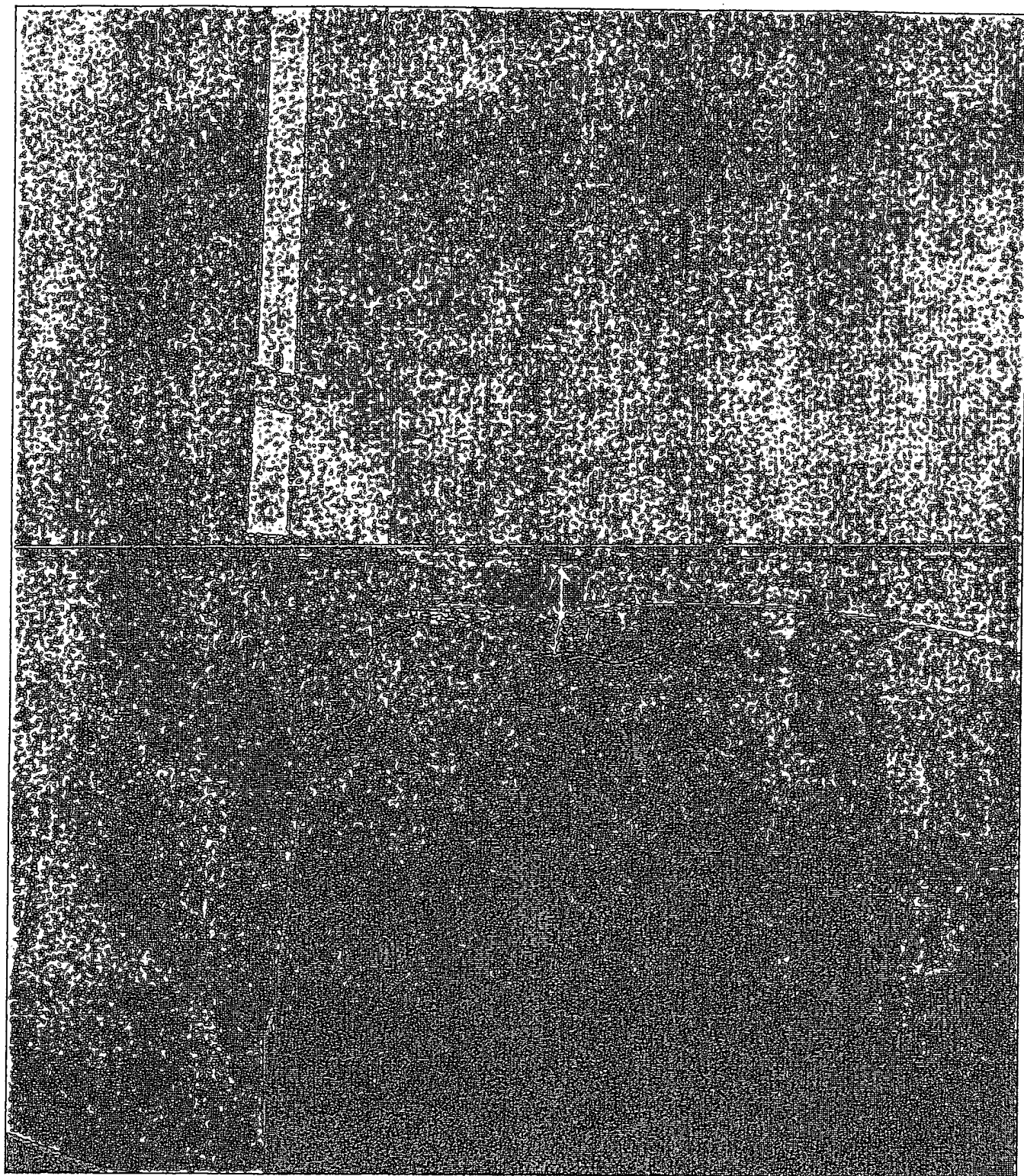


Exhibit C

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398-US-03

Barry L. Rauworth, et. al.

Application No.: 09/960,606

Examiner: S. Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

37 C.F.R. §1.132 DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This Declaration is submitted in support of the Amendment filed with this continuation application.

1. I, Douglas J. Christensen, of the law firm Patterson, Thuente, Skaar & Christensen, P.A., am intellectual property counsel for Entegris, Inc. (hereinafter Entegris), owner of the present application and manufacturer of a blow molded drum covered by the claims in the present application.

2. In light of the claims of the present application, I have made a rigorous examination of a sample plastic drum manufactured by Rikutec, carrying the markings UN1H1/Y1.5/300/___/D BAM596-RIKUTEC. Photographs of the Rikutec drum, notated with reference numerals, are attached as Exhibits A-C.

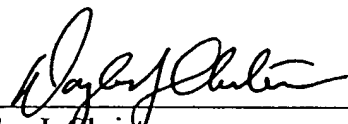
3. With reference to Exhibits A-C, the dimension h4, which is the distance between recessed portion 46 and the top of the chime 64 measured between 1.98 and 2.04 inches. The dimension d1, which is the distance between recessed portion 46 and the top of first fitting

68, measured 0.70 inch. The distance h5, which is the distance between the top of the first fitting 68 and the top of the chime 64 measured about 1.33 inch.

4. In my opinion, the Rikutec drum would infringe the currently pending independent claims 6 and 11 of the present application if those claims become a part of an issued patent in substantially the same form.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 7/22/02

By 
Douglas J. Christensen

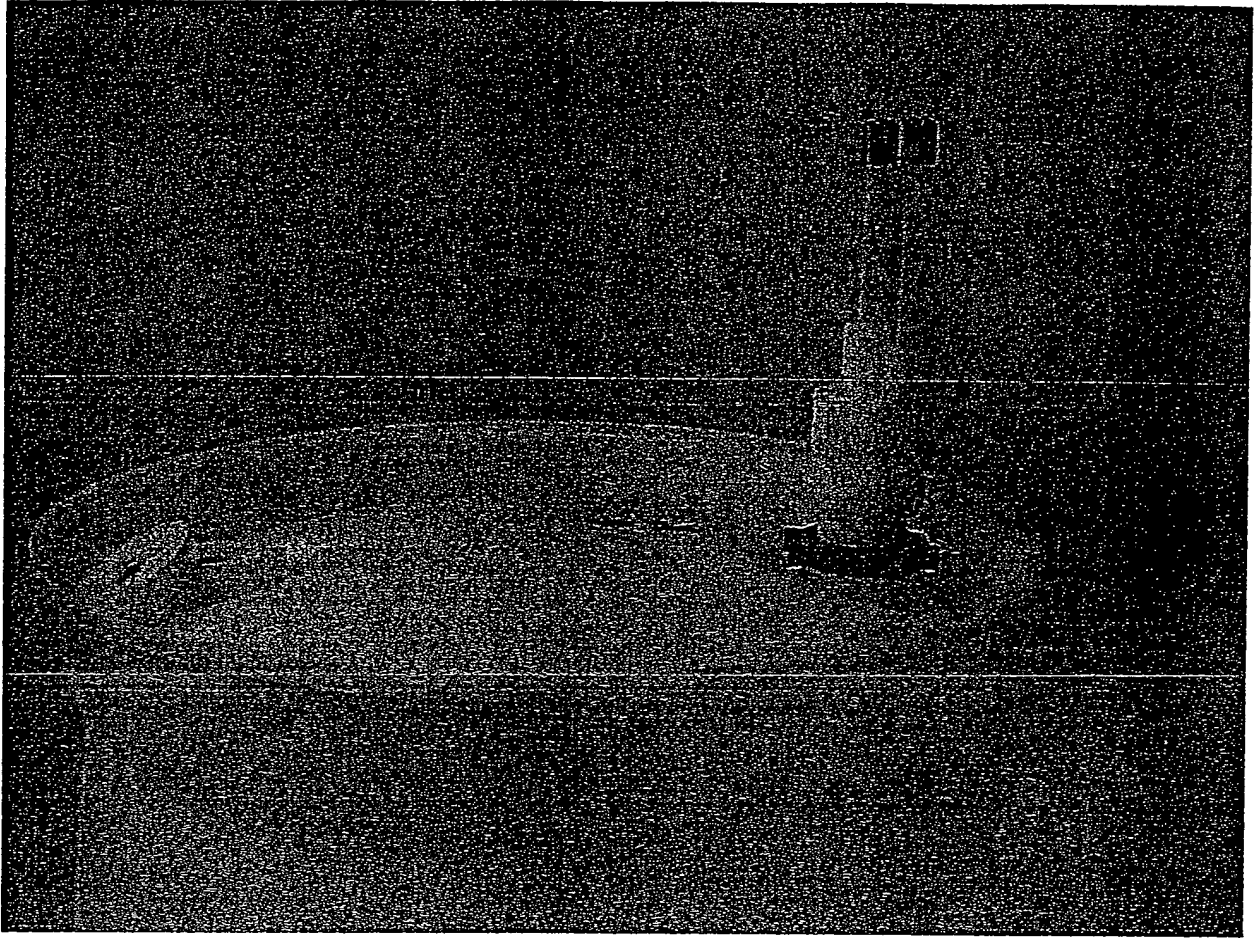


Exhibit A

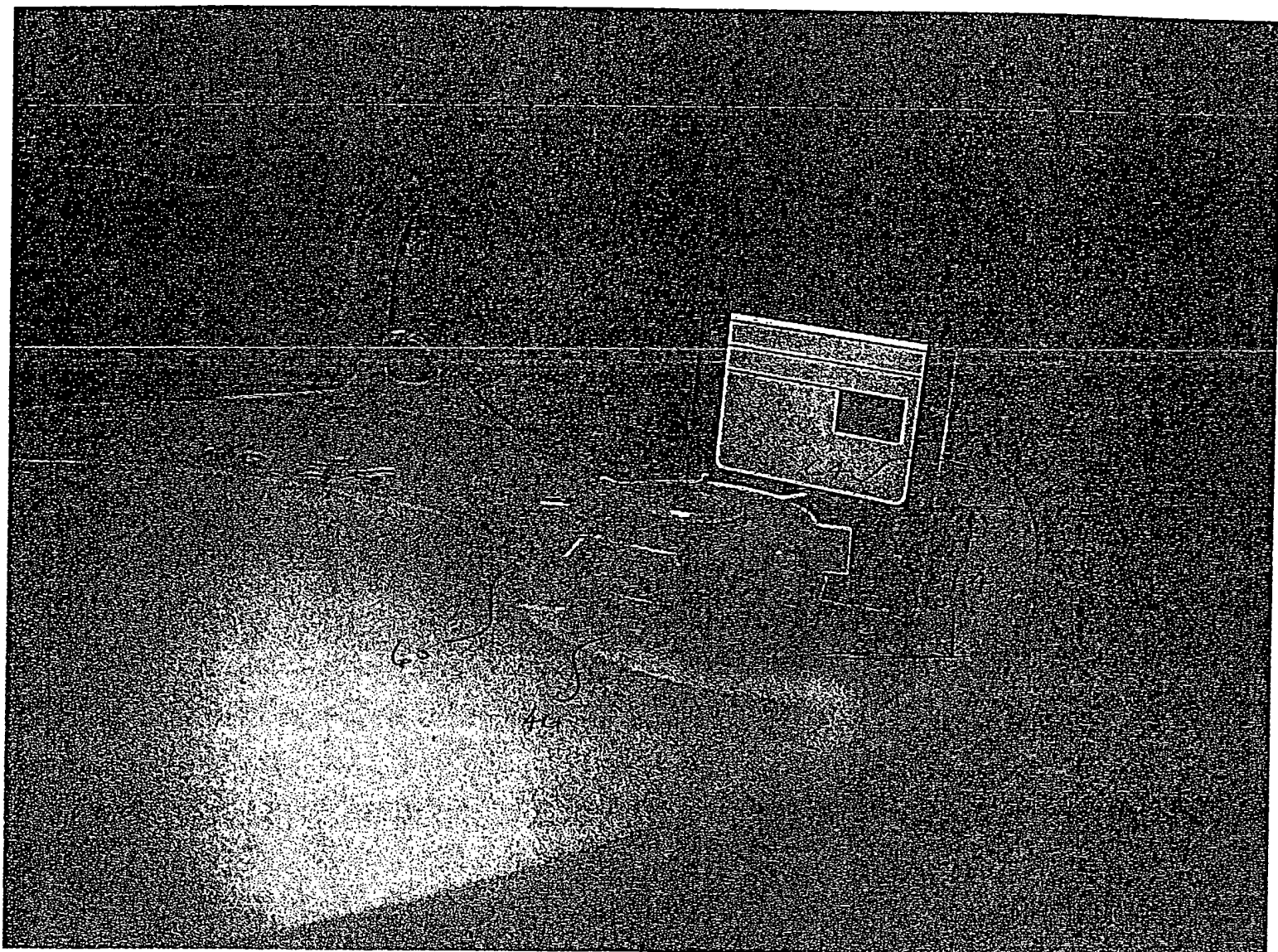


Exhibit B

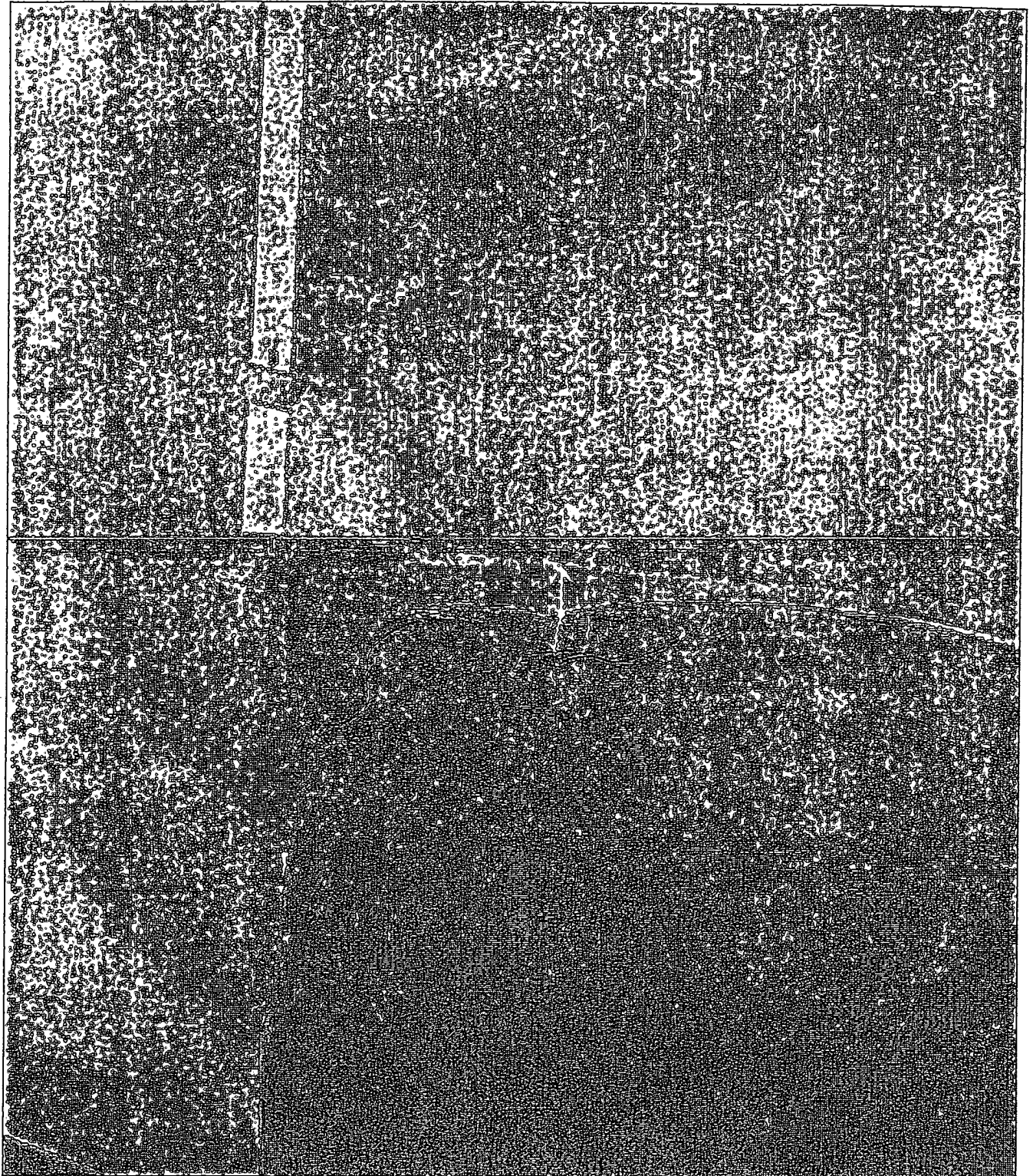


Exhibit C

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth, et. al.

Application No.: 09/960,606

Examiner: S. Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

PETITION TO MAKE APPLICATION SPECIAL
UNDER 37 C.F.R. §1.102(d)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicant hereby petitions to make the above-identified and enclosed non-provisional patent application special under 37 C.F.R. §1.102(d) and per the requirements of MPEP 708.02, paragraph II (Infringement). Please credit or debit Deposit Account No. 16-0631 as needed to ensure consideration of the disclosed information.

Applicant submits that the pre-requisites for making the application special have been met, per MPEP 708.02, paragraph II, in that: (1) there is an infringing device on the market; (2) I have made a rigid comparison of the alleged infringing device with the claims of the application and, in my opinion, some of the claims are unquestionably infringed; and (3) I have caused to be made a careful and thorough search of the prior art, the search being made on-line by the law firm of Patterson, Thunte, Skaar and Christensen, P.A. of Minneapolis, Minnesota and including the U.S. art in *Class 220, Subclasses 601, 608, 672, 675, 203.01, and 004.05*. The references deemed most closely related to the subject matter are enclosed herewith or are already of record in this case.

In my previous Rule 1.132 declaration entered in this case, I described my rigorous examination of a plastic drum manufactured by a German company known as Rikutec, and stated my opinion that the Rikutec drum would infringe the currently pending independent claims 6 and 11 of the present application, if those claims become a part of an issued United States patent in substantially the same form. A copy of my declaration is included herewith. Upon information and belief, the drum referred to in my declaration is the same drum advertised by Rikutec under the designation "UC-Drum" on their internet website at the address <http://www.rikutec.de/Behalter/UC-Drum/uc-drum.html>.

Upon information and belief, and based on the Declaration of Charmaine Shupe enclosed herewith, the Rikutec drum described in my declaration has now been introduced into the United States market by virtue of having been used to ship chemical substances to multiple locations within the United States.

In view of the above, Applicant respectfully submits the pre-requisites for special status, per MPEP 708.02, paragraph II (Infringement), have been met and that the requirements for making the present application special per 37 C.F.R. § 1.102(d) have been met. As such, Applicant requests that the Commissioner grant the petition and move the application forward for accelerated examination.

Respectfully submitted,



Douglas J. Christensen
Registration No. 35,480

Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-3001

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office, Fax No. (703) 872-9302 on the date shown below.

Nov 6, 2002
Date

Douglas J. Christensen
Douglas J. Christensen

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth, et. al.

Application No.: 09/960,606

Examiner: S. Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This Declaration is submitted in support of the Petition to Make Special filed in this case.


1. I, Charmaine Shupe, am a Product Sales Specialist for Entegris, Inc. (hereinafter Entegris).

2. I am familiar with a blow-molded drum manufactured by Rikutec, a German company, and designated as "UC-Drum" on their advertising website at the address <http://www.rikutec.de/Behalter/UC-Drum/uc-drum.html>.

3. While I was at a customer site in Texas in October, 2002, I observed several hundred drums that were identical in appearance to the "UC-Drum" manufactured by Rikutec. Upon information and belief, the drums I observed were the "UC-Drum" manufactured by Rikutec, and were in process of being used to ship liquid chemical substances to other locations within the United States.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 16 Nov, 2002

By 
Charmaine Shupe

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth, et. al.

Application No.: 09/960,606

Examiner: S. Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

37 C.F.R. §1.132 DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This Declaration is submitted in support of the Amendment filed with this continuation application.

1. I, Douglas J. Christensen, of the law firm Patterson, Thuente, Skaar & Christensen, P.A., am intellectual property counsel for Entegris, Inc. (hereinafter Entegris), owner of the present application and manufacturer of a blow molded drum covered by the claims in the present application.

2. In light of the claims of the present application, I have made a rigorous examination of a sample plastic drum manufactured by Rikutec, carrying the markings UN1H1/Y1.5/300/___/D BAM596-RIKUTEC. Photographs of the Rikutec drum, notated with reference numerals, are attached as Exhibits A-C.

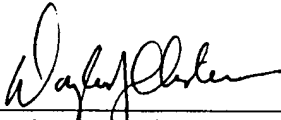
3. With reference to Exhibits A-C, the dimension h4, which is the distance between recessed portion 46 and the top of the chime 64 measured between 1.98 and 2.04 inches. The dimension d1, which is the distance between recessed portion 46 and the top of first fitting 68,

measured 0.70 inch. The distance h5, which is the distance between the top of the first fitting 68 and the top of the chime 64 measured about 1.33 inch.

4. In my opinion, the Rikutec drum would infringe the currently pending independent claims 6 and 11 of the present application if those claims become a part of an issued patent in substantially the same form.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: Nov. 6, 2002

By 
Douglas J. Christensen

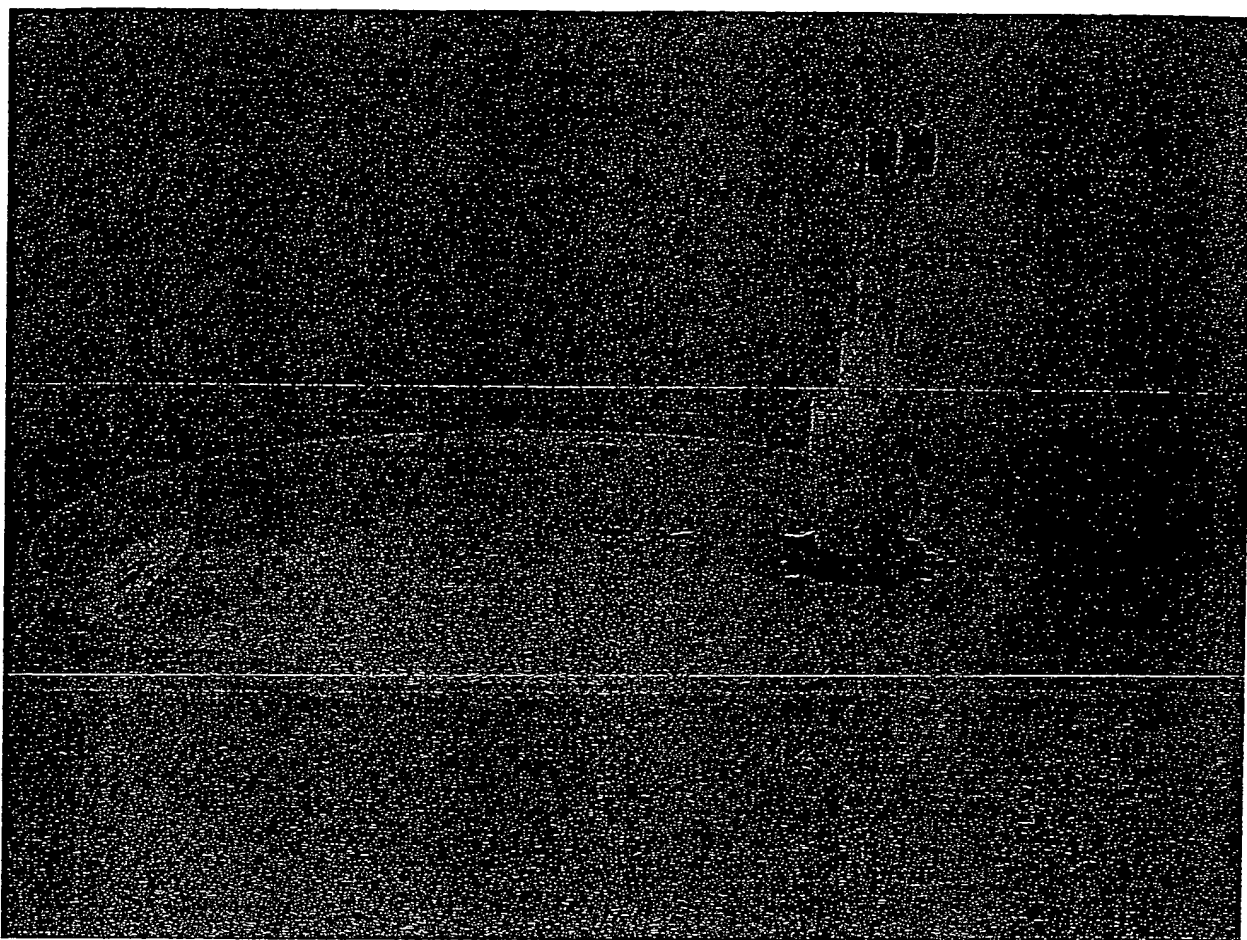


Exhibit A



Exhibit B

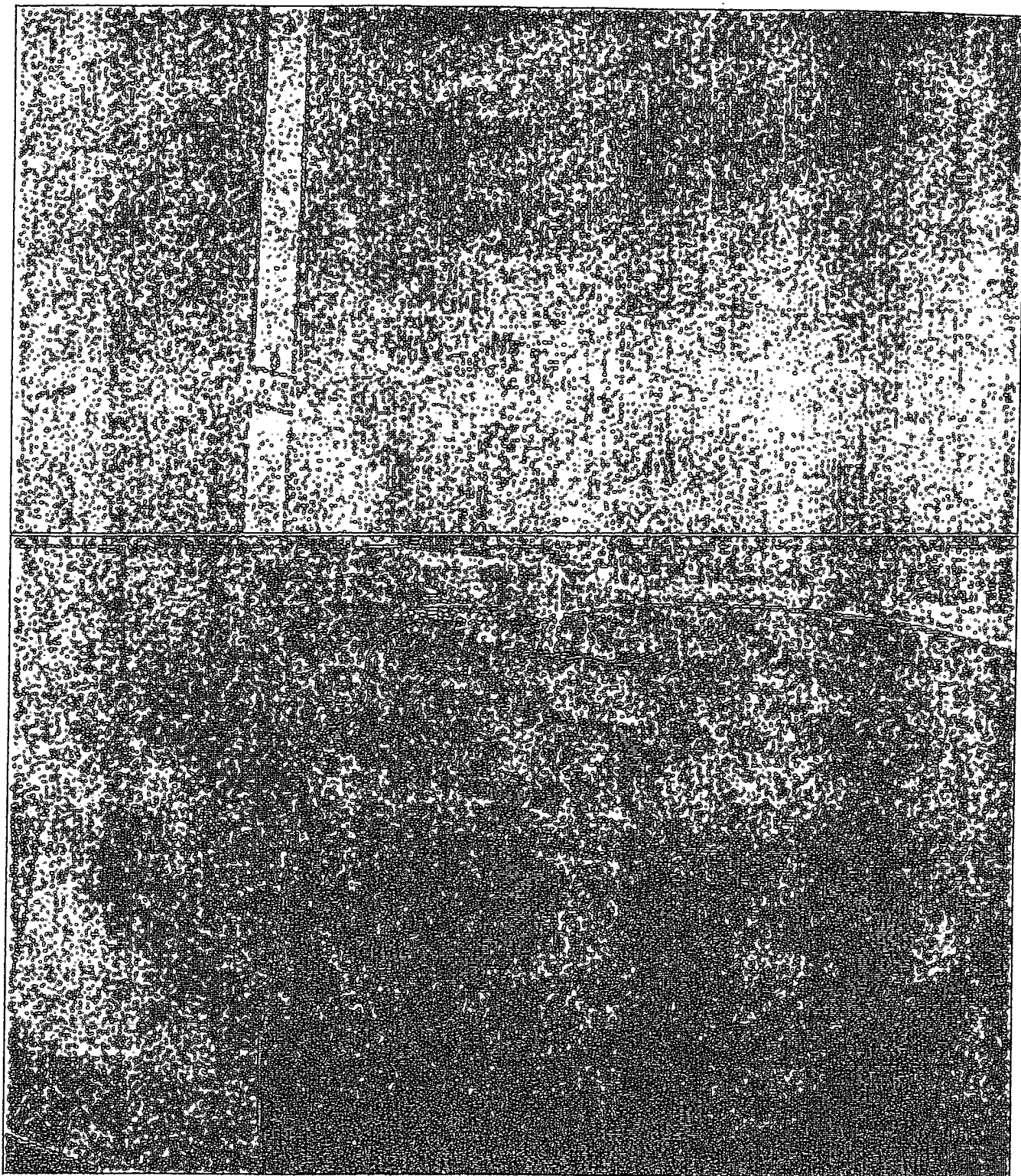


Exhibit C

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Rauworth et al.

Confirmation No.: 6639

Application No.: 09/960,606

Examiner: S. Pollard

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

INFORMATION DISCLOSURE STATEMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. § 1.56, the attention of the Patent and Trademark Office is hereby directed to the references listed on the attached Form PTO-1449. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the references be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Action or Notice of Allowance.

Please credit or debit Deposit Account No. 16-0631 as needed to ensure consideration of the disclosed information.

Respectfully submitted,



Douglas J. Christensen
Registration No. 35,480

Application No. 09/960,606

Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-3001


Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office, Fax No. (703) 872-9302 on the date shown below.

Date

Nov. 6, 2002



Douglas J. Christensen

FORM PTO-1449 MODIFIED				Docket No.: 2267.398US03		Application No.: 09/960,606	
INFORMATION DISCLOSURE CITATION IN AN APPLICATION				APPLICANT: Rauworth, et al.			
				FILING DATE: September 21, 2001			
				GROUP ART UNIT: 3727			
U.S. PATENT DOCUMENTS							
EXAMINER INITIAL	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
	5,975,338	11/02/99	Przytulla et al.	220	601		
	5,984,133	11/16/99	Schutz	220	601		
	6,024,245	02/15/00	Malik et al.	220	604		
	6,026,980	02/22/00	Malik et al.	220	604		
FOREIGN PATENT DOCUMENTS							
EXAMINER INITIAL	DOCUMENT NO.	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION YES NO	
OTHER DOCUMENTS (including Author, Title, Date, Pertinent Pages, etc.)							
EXAMINER SIGNATURE				DATE CONSIDERED			
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.							



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

RECEIVED

DEC 18 2002

DEC 30 2002

Paper No. 12

In re Application of
Barry L. Rauworth *et al*
Application No. 09/960,606
Filed: September 21, 2001
Attorney Docket No. 2267.398US03

PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.
:
: DECISION ON PETITION
:
:

This is a decision on the petition filed by facsimile transmission on November 6, 2002, by which petitioners have requested that the above captioned application be accorded special status for advanced examination out of turn. The \$130.00 petition fee has been received.

The petition is granted.

Petitioners' request special status based upon the practice established at MPEP § 708.02(II), Infringement. A review of the petition shows that petitioners have clearly met the requirements for a showing in support of a petition to make special based upon the existence of an infringing device.

Accordingly, the examiner will treat this application as special throughout its prosecution. Prior to the next action on the merits, the examiner will conduct a rigorous search for potentially interfering applications. The interference search will be brought up to date prior to each successive action.

The application is being forwarded to the Supervisory Patent Examiner of Patent Examining Art Unit 3727, who will forward the application to the examiner for action consistent with this Decision.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner
Patent Examining Groups 3710 and 3720

Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100

1/14/03 docket
pt

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3 - 6, 8 - 11, and 13 - 15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (142).

The particular dimensions claimed would have been obvious to one of ordinary skill in the construction of the device of Schutz (142), motivated by the intended use. The employment of a vent valve in the vent hole of the device of Schutz (142) would have been obvious to one of ordinary skill in the art. The employment of a cover over the vent valve and vent outlet would have been obvious to one of ordinary skill in the art, motivated by the wide acceptance of such in the field.

3. Claims 2, 7, and 12 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (142) as applied to claims 1, 3 - 6, 8 - 11, and 13 - 15 above, and further in view of Dubois, et. al.

It would have been obvious to one of ordinary skill in the art to have employed the localized recess teaching set forth in Dubois, et. al. in the construction of the device of Schutz (142), producing no new and unobvious results.

4. Claims 5 and 6 - 10 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, line 1: " the handle " has no proper antecedent basis.

Claim 6, line 7: " the second fitting " has no proper antecedent basis.

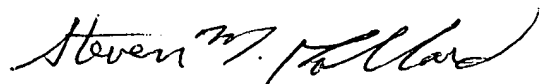
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The Declaration submitted on 11/6/02 has been considered.

Steven M. Pollard

30 December 2002



Steven Pollard
Primary Examiner

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Confirmation No.: 6639

Application No.: 09/960,606

Examiner/Supervisor: Lee W. Young

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In view of the Amendment After Notice of Appeal submitted herewith, Applicant respectfully requests reconsideration of the Final Office Action in the above-identified patent application. Pertinent to the request are the following noteworthy considerations:

Applicant notes that significant amendments to the Office Action of March 21, 2002 were submitted along with two 37 C.F.R. § 1.132 Declarations evidencing secondary considerations. In spite of this, the final Office Action (mailed August 29, 29002) was a simple "cut and paste" of the March 21, 2002 Office Action with no apparent consideration given to the submitted evidence, nor the amended claims, nor the arguments submitted in the Remarks. The examiner simply ignored the response in the Final Office Action.

Counsel for Applicant made numerous, repeated attempts over a period of several months to telephonically contact Stephen Pollard, the previous Examiner assigned to this case, to seek an interview for clarification of the Office Action, reasons for rejection of the claims, and to discuss amendments to the claims. These attempts were all unsuccessful. Further, numerous phone messages for Examiner Pollard left by Applicant requesting a return telephone call to

Application No. 09/960,606

discuss this case or to indicate the Examiner's availability for an interview, were met with no response. Moreover, Applicant's written request contained in the Amendment of July 22, 2002, for Examiner Pollard to indicate availability for an interview, similarly met with no response. As a result, Applicant was unable to accurately ascertain the Examiner's specific concerns regarding the claims, in order to frame appropriate amendments.

Respectfully submitted,



Douglas J. Christensen
Registration No. 35,480

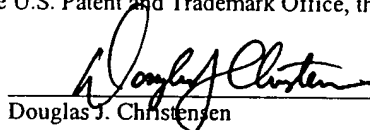
Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-3001

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF FACSIMILE

I hereby certify that this document is being submitted to the U.S. Patent and Trademark Office, the Commissioner for Patents, via facsimile to (703) 305-3579.

July 7, 2003
Date of Deposit



Douglas J. Christensen

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner/Supervisor: Lee W. Young

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

AMENDMENT AFTER NOTICE OF APPEAL

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

In response to the Office Action of December 31, 2002, amendment to the above-identified patent application is requested.

The present amendment comprises the following sections:

A. Amendments to the Claims

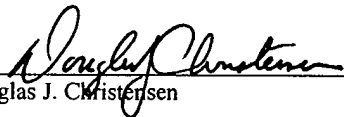
B. Remarks

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF FACSIMILE

I hereby certify that this document is being submitted to the U.S. Patent and Trademark Office, the Commissioner for Patents, via facsimile to (703) 305-3579.

July 7, 2003
Date of Deposit


Douglas J. Christensen

AMENDMENTS TO THE CLAIMS

A detailed listing of all claims that are, or were, in the present application, irrespective of whether the claim(s) remains under examination in the application are presented below. The claims are presented in ascending order and each includes one status identifier. Those claims not cancelled or withdrawn but amended by the current amendment utilize the following notations for amendment: 1. deleted matter is shown by strikethrough; and 2. added matter is shown by underlining.

1. (Currently Amended) A ~~combination plastic molded drum, and closure,~~ having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure; ~~the top structure, the cylindrical wall, and the bottom structure,~~ all integrally molded;

the top structure comprising a top wall and a chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion and adapted to receive components including a closure; ;

wherein at least the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

wherein the distance from ~~the recessed portion to the top of the first fitting to the top edge of the chime~~ is about 1 to 1 ¼ inches and ~~wherein the distance from the recess portion to the top of the top edge of the chime is 1 ½ to 2 ¼ inches~~ is sufficient such that components extending 1 and ¼ inches above the top of the first fitting is below the top edge of the chime; and ~~the recessed portion positioned such that the first fitting, and the closure do not extend above the top edge of the chime.~~

2. (Original) The ~~combination~~ plastic molded drum of claim 1 wherein the recessed portion is localized around the first fitting.

3. (Original) The ~~combination~~ plastic molded drum of claim 1 ~~wherein the recessed portion extends substantially throughout the top wall~~ further comprising a bottom chime integrally molded so that there are no welded portions connecting the bottom chime with the bottom wall or the cylindrical wall.

4. (Original) The ~~combination~~ plastic molded drum of claim 1 wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

5. (Previously Amended) The plastic molded drum ~~combination~~ of claim 4 further comprising a cover extending over the vent outlet, and vent valve.

6. (Currently Amended) A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure, the top structure and the cylindrical wall integrally molded;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime with a top edge; the top wall, the recessed portion, the first fitting, and the chime all integrally molded wherein at least the chime, the top wall, and the cylindrical wall are integrally molded in one piece so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

the closure engageable with the first fitting to secure the closure in place on the drum; and

the chime extending above the closure when the closure is secured on the drum insert, the chime extending above the recessed portion 1 ½ to 2 ¾ inches; and

the distance between the first fitting and the top edge of the chime is sufficient such that where components attach to and extends 1 and ¼ inches above the first fitting, the components do not extend above the top edge of the chime.

7. (Original) The combination of claim 6, wherein the recessed portion is localized around the first fitting.

8. (Original) The combination of claim 6, wherein the ~~recessed portion extends substantially throughout the top wall~~ closure is attached to a drum insert with the drum insert attached to the first fitting.

9. (Original) The combination of claim 6, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

10. (Currently Amended) The combination of claim 6, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the ~~upperwardly~~ extending chime.

11. (Currently Amended) ~~A combination-blow molded plastic drum, and closure, the plastic molded drum~~ made by a process comprising blow molding said drum as a one-piece, integrally molded body including a cylindrical wall, a top structure, and a bottom structure, the top structure and the cylindrical wall integrally molded;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting, and an upwardly extending chime having a top edge, wherein the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall; ~~the top~~

~~wall, the recessed portion, the first fitting, and the chime all integrally molded;~~

the first fitting adapted to receive a drum insert with the a closure secureable on the drum insert engageable with the second fitting to secure the closure in place on the drum, the chime extending above the closure when the closure is secured on the drum insert and the drum insert is received on the first fitting, the height of the chime sufficient to allow a the closure to extend 1 ¼ inches above the top of the first fitting and be below the top edge of the chime.

12. (Currently Amended) The drum ~~combination~~ of claim 11, wherein the recessed portion is localized around the first fitting.

13. (Currently Amended) The drum ~~combination~~ of claim 11, wherein the recessed portion extends substantially throughout the top wall.

14. (Currently Amended) The drum ~~combination~~ of claim 11, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

15. (Currently Amended) The drum ~~combination~~ of claim 11, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upperwardly extending chime.

REMARKS

Claims 1-15 are pending. By this Amendment, claims 1, 6, and 10-15 are amended.

Applicant submits that the claim amendments presented herein are necessary for reasons explained below, and place this case in condition for allowance. Further, Applicant submits that good and sufficient reasons exist for why these claim amendments were not presented earlier. Specifically, counsel for Applicant made numerous, repeated attempts over a period of several months to telephonically contact Stephen Pollard, the previous Examiner assigned to this case, to seek an interview for clarification of the Office Action, reasons for rejection of the claims, and to discuss amendments to the claims. These attempts were all unsuccessful. Further, numerous phone messages for Examiner Pollard left by Applicant requesting a return telephone call to discuss this case or to indicate the Examiner's availability for an interview, were met with no response. Moreover, Applicant's written request contained in the Amendment of July 22, 2002, for Examiner Pollard to indicate availability for an interview, similarly met with no response. As a result, Applicant was unable to accurately ascertain the Examiner's specific concerns regarding the claims, in order to frame appropriate amendments.

Additional related reasons are that this application has been made special and such consideration of the submitted amendments is consistent with accelerating the prosecution of the case.

Rejections Under 35 U.S.C. § 112

In the Final Office Action of December 31, 2002, claims 5 and 6-10 were rejected as being indefinite. Specifically, claim 5 was said to contain a term "the handle" which lacked antecedent basis, and claim 6 was said to contain a term "the second fitting" which lacked antecedent basis. In response, Applicant submits that each of these matters were corrected by

amendment in the Amendment of July 22, 2002, and that claims 5 and 6 as now pending contain no such terms. As a result, Applicant respectfully requests that these rejections be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1, 3-6, 8-11, and 13-15 were rejected as obvious over Schutz '142. In response, Applicant has amended claims 1, 6, and 11 to clarify that the present invention includes a plastic drum with an integrally molded structure wherein the unique tall protective chime of the invention is integrally formed with the top wall and cylindrical sides of the drum so that the drum has no welded portions connecting any of these portions of the drum. Care has been taken not to add new matter. Applicant respectfully submits that none of the cited references, including Schutz '142, alone or in combination, disclose a drum having a tall chime wherein the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, with the fitting positioned so that components thereon can extend upwardly 1 and ¼ inches and still be below the top of the chime as now claimed. As a result, Applicant respectfully requests that the Examiner withdraw these rejections.

Further, claims 2, 7, and 12, were rejected over Schutz '142 in combination with DuBois, et. al. '306. As these claims are dependent on base claims demonstrated above to be themselves allowable, Applicant submits that these claims are allowable. Applicant respectfully requests that the rejections of these claims be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Considering the previous inability to communicate with the previous examiner, the newly designated examiner is requested to telephone the undersigned to try and reach an allowance without continuing the appeal process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Douglas J. Christensen', written in a cursive style.

Douglas J. Christensen
Registration No. 35,480

Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-3001

Advisory Action

Application No.

09/960,606

Applicant(s)

RAUWORTH ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 29 January 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): 112, 2nd paragraph rejections.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-15.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Stephen J. Castellano
Primary Examiner
Art Unit: 3727

Continuation of 2. NOTE: For at least the reason that independent claims 1, 6 and 11 would include the added language "wherein the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall" which has not been considered previously. The proposed amendment further complicates the issues for appeal.

Continuation of 5. does NOT place the application in condition for allowance because: The request for reconsideration is denied since it request reconsideration in view of the amendment after Notice of Appeal. This amendment seems to raise issues which would further complicate the appeal since the amendments include language not previously considered. As for the previously filed Declarations, only one discusses commercial success (Declaration filed by Don Brettingen on August 13, 2002) and it is conclusionary and doesn't provide enough evidence to substantiate commercial success. The other two declarations seem to substantiate evidence of an infringing device use to establish the Special status of this application.



24113

PATENT TRADEMARK OFFICE

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Patterson, Thunte, Skaar & Christensen, P.A.
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Telephone: (612) 349-5740
Facsimile: (612) 349-9266

Attorney Docket No. 2267.398US03

REQUEST FOR CONTINUED EXAMINATION
(RCE) TRANSMITTAL

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of Application No. 09/960,606, filed September 21, 2001 for: BLOW MOLDED DRUM, by: Barry L. Rauworth and John Hennen.

1. Submission required under 37 C.F.R. § 1.114
 - a. ☒ Previously submitted
 - ☒ Please enter in the present application the unentered Amendment After Notice of Appeal under 37 C.F.R. § 1.116, with any attachments, filed on July 7, 2003 in said prior application.
 - ☐ Consider the arguments in the Appeal Brief or reply Brief previously filed on _____
 - ☐ Other _____
 - b. ☐ Enclosed
 - ☐ A Preliminary Amendment is enclosed. Claims added by this Amendment are properly numbered consecutively beginning with the number next following the highest numbered claim in the prior application.
 - ☐ Affidavit(s)/Declaration(s)
 - ☐ Information Disclosure Statement (IDS)
 - ☐ Other _____

2. [X] The filing fee is calculated below:

	Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra (Equals)	Small Entity Rate	Add'l Fee	OR	Large Entity Rate	Add'l Fee
Total	15	- 15	= 0	x 9	\$		x 18	\$0
Indep.	3	- 3	= 0	x 42	\$		x 84	\$0
RCE fee				+ 375	\$		+ 750	\$750.00
Mult. Dep.			=	+ 140	\$		+ 280	\$0
TOTAL					\$	OR	TOTAL	\$750.00

[] First Presentation of Multiple Dependent Claim [MDC]

- * If the entry in Column 1 is less than the entry in Column 2, write "0" in Column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space.
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box in Column 1 of a prior Amendment or the number of claims originally filed.

3. [X] A check in the amount of \$750.00 is enclosed. A Petition for Extension of Period for Response of four months, authorizing extension fee to be charged to Deposit Account No. 06-1631 was previously filed (copy attached). The Commissioner is hereby authorized to grant any extensions of time and to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required during the entire pendency of this application to Deposit Account No. 16-0631.

Respectfully submitted,



Douglas J. Christensen
Registration No. 35,480

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

July 21, 2003
Date of Deposit

Douglas J. Christensen
Douglas J. Christensen

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
4800 IDS Center, 80 South Eighth Street
Minneapolis, Minnesota 55402-2100 USA

FACSIMILE COVER SHEET

TELEPHONE: (612) 349-5740 TOLL FREE: 1-800 331-4537
FACSIMILE: (612) 349-9266

TOTAL NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 12

[] Original documents to follow by mail

[X] No originals will be sent

DATE: July 7, 2003

TO: Examiner/Supervisor Lee W. Young
Group Art Unit 3727

FAX #: 703-305-3579

PHONE #:

Application No.: 09/960,606
Applicant: Barry L. Rauworth et al.
Due Date:

OUR REF.: 2267.398US03

FROM: Douglas J. Christensen
PHONE #: (612) 349-3001

Attached please find the following document for filing in the above-identified patent application:

- 1) Amendment After Notice of Appeal.
- 2) Request for Reconsideration
- 3) Petition for Extension of Period for Response

Sincerely,

Douglas J. Christensen
Reg. No. 35,480

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office, Fax No. 703-305-3579 on the date shown below thereby constituting filing of same.

July 7, 2003
Date



Douglas J. Christensen

THIS FACSIMILE TRANSMISSION CONTAINS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE PARTY IDENTIFIED ABOVE. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CALL PATTERSON, THUENTE, SKAAR & CHRISTENSEN COLLECT AT (612) 349-5740. DISTRIBUTION, REPRODUCTION OR ANY OTHER USE OF THIS TRANSMISSION BY ANY PARTY OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner/Supervisor: Lee W. Young

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

AMENDMENT AFTER NOTICE OF APPEAL

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

In response to the Office Action of December 31, 2002, amendment to the above-identified patent application is requested.

The present amendment comprises the following sections:

A. Amendments to the Claims

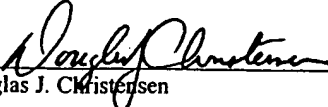
B. Remarks

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF FACSIMILE

I hereby certify that this document is being submitted to the U.S. Patent and Trademark Office, the Commissioner for Patents, via facsimile to (703) 305-3579.

July 7, 2003
Date of Deposit


Douglas J. Christensen

AMENDMENTS TO THE CLAIMS

A detailed listing of all claims that are, or were, in the present application, irrespective of whether the claim(s) remains under examination in the application are presented below. The claims are presented in ascending order and each includes one status identifier. Those claims not cancelled or withdrawn but amended by the current amendment utilize the following notations for amendment: 1. deleted matter is shown by strikethrough; and 2. added matter is shown by underlining.

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the top structure comprising a top wall and a chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion and adapted to receive components including a closure; ;

wherein at least the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

wherein the distance from ~~the recessed portion to the top of the first fitting to the top edge of the chime~~ is about 1 to 1 ¼ inches and wherein the distance from ~~the recess portion to the top of the top edge of the chime~~ is 1 ½ to 2 ¼ inches is sufficient such that components extending 1 and ¼ inches above the top of the first fitting is below the top edge of the chime; and ~~the recessed portion positioned such that the first fitting, and the closure do not extend above the top edge of the chime.~~

2. (Original) The ~~combination~~ plastic molded drum of claim 1 wherein the recessed portion is localized around the first fitting.
3. (Original) The ~~combination~~ plastic molded drum of claim 1 ~~wherein the recessed portion extends substantially throughout the top wall~~ further comprising a bottom chime integrally molded so that there are no welded portions connecting the bottom chime with the bottom wall or the cylindrical wall.
4. (Original) The ~~combination~~ plastic molded drum of claim 1 wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.
5. (Previously Amended) The plastic molded drum ~~combination~~ of claim 4 further comprising a cover extending over the vent outlet, and vent valve.
6. (Currently Amended) A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure, the top structure and the cylindrical wall integrally molded;
the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime with a top edge; the top wall, the recessed portion, the first fitting, and the chime all integrally molded wherein at least the chime, the top wall, and the cylindrical wall are integrally molded in one piece so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;
the closure engageable with the first fitting to secure the closure in place on the drum; and
the chime extending above the closure when the closure is secured on the drum insert, the chime extending above the recessed portion 1 ½ to 2 ¾ inches;
and

the distance between the first fitting and the top edge of the chime is sufficient such that where components attach to and extends 1 and ¼ inches above the first fitting, the components do not extend above the top edge of the chime.

7. (Original) The combination of claim 6, wherein the recessed portion is localized around the first fitting.

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the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting, and an upwardly extending chime having a top edge, wherein the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall; ~~the top~~

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Respectfully submitted,



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UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauworth	2267.398US03	6639

7590

08/29/2003

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80 South 8th Street
Minneapolis, MN 55402-2100

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SEP 02 2003

PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/29/2003

DOCKETED

Please find below and/or attached an Office communication concerning this application or proceeding.

Date of Office Action _____
Response due 8-29-03
Per 1 month extension 11-21-03
Per 2 month extension 12-21-03
Per 3rd and FINAL extension 1-29-04
2-24-04

Office Action Summary

Application No.

09/960,606

Applicant(s)

RAUWORTH ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the drum insert" in lines 14 and 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 is indefinite because it can't be determined if the scope of the claim includes the drum insert and closure as lines 5 and 6 on page 5 positively recite the structure of the chime extending above the closure when the closure is secured on the drum insert and the drum insert is received on the first fitting but lines 3 and 4 of page 5 state non-positively that the first fitting is adapted to receive a drum insert with a closure secureable on the drum insert.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla ('049).

McKenzie discloses a plastic molded drum having a bung opening, the drum comprising a side wall, top structure and bottom structure, all integrally molded; the top structure comprising a chime (sleeve 12) having a top edge extending circumferentially around and radially outward with respect to the top wall, the chime is integrally molded in a separate operation than the top

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wall and side wall, there are no welded portions connecting the chime with the top wall or the side wall, and there are no welded portions connecting the top wall and the side wall, wherein the distance from the top of the first fitting to the top edge of the chime is sufficient such that components extending $1 \frac{1}{4}$ inches above the top of the first fitting is (are) below the top edge of the chime (see total height of 20 inches and volume of 55 liters in column 5, lines 45-46). A container of this height with the height of the chime as drawn in relation to the height of the top of the first fitting appears to be at least $1 \frac{1}{4}$ inches higher.

McKenzie discloses the invention except for the cylindrical side wall. Przytulla teaches a cylindrical side wall. It would have been obvious to modify the shape of the side wall to be cylindrical as a matter of design choice in sacrificing the packing efficiency of rectangular in cross section side walls for cylindrical side walls which have less corner surfaces on their interior allowing faster and easier cleaning.

In the event that the rejection is not sustained due to a lack of disclosure of a $1 \frac{1}{4}$ inch height difference between the top edge of the chime and the top of the first fitting, it would have to modify this height by engineering design choice as an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack.

Re claim 3, Przytulla teaches a bottom chime. It would have been obvious to add a bottom chime to prevent damage to the bottom structure and to avoid ruptures and spills due to this damage.

Note that: The admitted prior art in this application includes Fig. 1, 3-6 and any portions of the written specification which refer to these figures.

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Claims 4, 5, 8, 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla as applied to claims 1 and 6 above, and further in view of the admitted prior art within this application (the admitted prior art).

For claims 4, 5, 9 and 14, McKenzie discloses a closure 29. The combination discloses the invention except for the closure having a vent outlet and a vent valve and a cover extending over the vent outlet and valve. Admitted prior art as shown in Fig. 5 teaches a venting closure 100 having a vent outlet 106 and a vent valve 104 and a cover 108. It would have been obvious to replace the closure of McKenzie with the closure 100 and cover 108 as motivated by the need for a closure with pressure relieving capability so that damage or an explosion doesn't occur due to excessive pressure.

For claims 8 and 11-15, McKenzie discloses a closure 29 but lacks a showing of a drum insert and closure. The combination discloses the invention except for the drum insert and a closure attached to the drum insert. Admitted prior art as shown in Fig. 1, 3 and 4 teach a drum insert 54 having components 56, 78, 85, 86, 87, 89 and 98 and a related closure 60 having components 88, 90, 92 and 94. It would have been obvious to replace the closure of McKenzie with the drum insert and closure as motivated by the need to attach a multiple port bung connector allowing the contents of the drum to be suctioned or siphoned from the interior through tube 56 in an upright configuration without having to insert a tube or add another fitting with a tube and then detach the tube or fitting upon completion of the discharge process as motivated by the time savings accomplished therein.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 are rejected under the judicially created doctrine of double patenting over claims 1-18 of U. S. Patent No. 6,045,000 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A plastic molded drum having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure, all integrally molded.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the


Application/Control Number: 09/960,606

Page 6

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organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
August 27, 2003

Notice of References Cited

Application/Control No.

09/960,606

Applicant(s)/Patent Under
Reexamination
RAUWORTH ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,199,570	04-1993	McKenzie, Kenneth M.	206/503
	B	US-4,925,049	05-1990	Przytulla, Dietmar	220/675
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauworth	2267.398US03	6639

7590

07/29/2003

Patterson, Thunte, Skaar & Christensen, P.A.
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

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DATE MAILED: 07/29/2003

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Attorney Docket No. 2267.398US03

AMENDMENT TRANSMITTAL

In re the application of:

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner: Stephen J. Castellano

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is an Amendment in the above-identified application.

[] Applicant(s) is/are entitled to small entity status in accordance with 37 CFR 1.27.

The filing fee has been calculated as shown below:

	Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra (Equals)	Small Entity Rate	Add'l Fee	OR	Large Entity Rate	Add'l Fee
Total	16	- 20	=	x 9	\$		x 18	\$
Indep.	4	- 3	=	x 43	\$		x 86	\$86.00
Mult. Dep.			=	+ 145	\$		+ 290	\$
TOTAL					\$	OR	TOTAL	\$86.00


[] First Presentation of Multiple Dependent Claim [MDC]

- * If the entry in Column 1 is less than the entry in Column 2, write "0" in Column 3.
- ** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.
- *** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space.
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box in Column 1 of a prior Amendment or the number of claims originally filed.

Application No. 09/960,606

[X] Checks in the amount of \$420.00 and \$ 86.00 are attached. The Commissioner is hereby authorized to charge payment of any fees under 37 C.F.R. § 1.16 for presentation of extra claims or credit any overpayment to Deposit Account No. 16-0631.

Respectfully submitted,

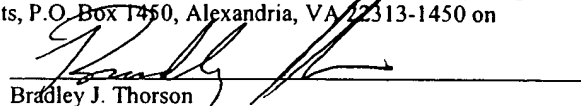

Bradley J. Thorson
Registration No. 52,288

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

1/28/2004
Date of Deposit


Bradley J. Thorson

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner: Stephen J. Castellano

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

AMENDMENT

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

In response to the Office Action of August 29, 2003, amendment to the above-identified patent application is requested.

The present amendment comprises the following sections:

- A. Amendments to the Claims
- B. Remarks

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

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1/28/2004
Date of Deposit

Bradley J. Thorson
Bradley J. Thorson

AMENDMENTS TO THE CLAIMS

A detailed listing of all claims that are, or were, in the present application, irrespective of whether the claim(s) remains under examination in the application are presented below. The claims are presented in ascending order and each includes one status identifier. Those claims not cancelled or withdrawn but amended by the current amendment utilize the following notations for amendment: 1. deleted matter is shown by strikethrough; and 2. added matter is shown by underlining.

1. (Currently Amended) A plastic molded drum having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure, all integrally molded;

the top structure comprising a top wall and a top chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion and adapted to receive components including a closure;

wherein at least the top chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the top chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

wherein the distance from the top of the first fitting to the top edge of the top chime is sufficient such that components extending 1 and ¼ inches above the top of the first fitting is below the top edge of the top chime; and

wherein the drum is made by a process comprising blow molding at least the cylindrical wall, the top wall, and the top chime together in a single blow molding operation.

2. (Previously Presented) The plastic molded drum of claim 1 wherein the recessed portion is localized around the first fitting.

3. (Currently Amended) The plastic molded drum of claim 1, further comprising a bottom chime integrally molded so that there are no welded portions connecting the bottom chime with the bottom wall or the cylindrical wall, and wherein the process for making the drum includes blow molding the bottom chime together with the cylindrical wall, the top wall, and the chime.

4. (Previously Presented) The plastic molded drum of claim 1 wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

5. (Previously Presented) The plastic molded drum of claim 4 further comprising a cover extending over the vent outlet, and vent valve.

6. (Currently Amended) A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure, ~~the top structure and the cylindrical wall integrally molded;~~

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime with a top edge; wherein at least the chime, the top wall, and the cylindrical wall are integrally molded in one piece in a single blow molding operation, so that the chime is not part of a separate body attached to the top wall or the cylindrical wall, so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

the closure engageable with the first fitting to secure the closure in place on the drum;

~~the chime extending above the closure when the closure is secured on the drum~~ ~~insert,~~ the chime extending above the recessed portion 1 ½ to 2 ¾ inches; and

the distance between the top of the first fitting and the top edge of the chime is sufficient such that where components attach to and extends being at least 1 and ¼ inches ~~above the first fitting, the components do not extend above the top edge of the chime.~~

7. (Original) The combination of claim 6, wherein the recessed portion is localized around the first fitting.

8. (Original) The combination of claim 6, wherein the closure is attached to a drum insert with the drum insert attached to the first fitting.

9. (Original) The combination of claim 6, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

10. (Previously Presented) The combination of claim 6, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upwardly extending chime.

11. (Currently Amended) A blow molded plastic drum made by a process comprising the step of blow molding said drum in a single blow molding operation as a one-piece, integrally molded body including a cylindrical wall, a top structure, and a bottom structure, the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting adapted to receive a drum insert with a closure, and an upwardly extending chime for protecting the drum insert and closure from physical contact, the chime having a top edge, ~~wherein the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall, the first fitting adapted to receive a drum insert with a closure secureable on the drum insert, the chime extending above the closure when the closure is secured on the drum insert and the drum insert is received on the first fitting, the height~~ top edge of the chime ~~sufficient to allow the closure to extend~~ at least 1 ¼ inches above the top of the first fitting and be below the top edge of the chime.

12. (Previously Presented) The drum of claim 11, wherein the recessed portion is localized around the first fitting.

13. (Previously Presented) The drum of claim 11, wherein the recessed portion extends substantially throughout the top wall.

14. (Previously Presented) The drum of claim 11, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

15. (Previously Presented) The drum of claim 11, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upwardly extending chime.

16. (New) A pair of stackable blow molded plastic drums, each drum comprising a cylindrical wall, a top structure, and a bottom structure, each drum being made by a process comprising blow molding the cylindrical wall, the top structure, and the bottom structure together in one piece in a single blow molding operation, the top structure of each drum comprising a top wall with a first fitting extending upwardly therefrom, the first fitting adapted to receive a component thereon, the top structure further including a chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to the top wall defining an upwardly directed recess on top of the drum for protecting the component from physical contact when the component is received on the first fitting, the recess having a height dimension of at least 1 and $\frac{1}{4}$ inches measured between the top of the first fitting and the top edge of the chime, the pair of drums being vertically stackable with the bottom structure of the upper drum confronting the top structure of the lower drum so that none of the lower drum top wall, first fitting, or component received on the first fitting contact the bottom structure of the upper drum when the drums are stacked.

REMARKS

By this Amendment, claims 1, 3, 6, and 11 are amended. New claim 16 is added. Claims 1-16 are pending for examination.

Rejections Under 35 U.S.C. § 112

In the Office Action of August 29, 2003, claims 6-15 were rejected as being indefinite. Specifically, claim 6 was said to contain a term "drum insert" which lacked antecedent basis. In response, the claim has been amended so as not to contain the term "drum insert." Further, claim 11 was said to positively recite the structure of the chime extending above the closure when the closure is secured on the drum insert and the drum insert is received on the first fitting, but to non-positively recite the drum insert and closure. In response, claim 11 has been amended to recite the chime structure height relative to the first fitting instead of relative to the insert and closure. As a result, Applicant respectfully requests that these rejections be withdrawn.

Rejections Under 35 U.S.C. § 103

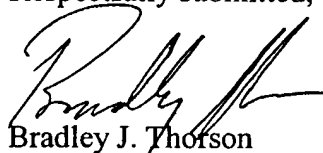
Claims 1-3, 6, 7 and 10 were rejected as obvious over McKenzie '570 in view of Przytulla '049. Claims 4, 5, 8, 9 and 11-15 were rejected as obvious over McKenzie '570 in view of Przytulla '049, and in further view of the admitted prior art. In response, Applicant has amended claims 1, 6 and 11 to clarify that the present invention includes a plastic drum with an integrally molded structure wherein the unique tall protective chime of the invention is integrally molded in one piece with at least the top wall and cylindrical sides of the drum by a process comprising a single blow molding operation. Applicant submits that McKenzie '570 does not teach or suggest an integral protective chime, but merely discloses a separate sleeve that is separately molded and mechanically attached to the top of the drum to receive another drum for stacking. The bottom of the upper drum fits within the sleeve and rests on the upper wall of the

container below. See McKenzie '570 at column 3, line 58 through column 4, line 15. A recess is provided in the bottom of the upper container to receive the closure member of the lower container. See Id. at column 4, line 16 through 27. This is in marked contrast to the present invention where the tall protective chime provides protection for a closure or other component on the drum.

Pryztulla '049 does not teach a protective chime or, in fact, any protection for closures or other components at all. One of skill in the art in seeking to solve the problem of protecting closures or other components attached to a drum when the drums are stacked would not have consulted or received any teaching or suggestion from McKenzie '570 or Pryztulla '049 either alone or together that a tall chime may be used to protect components on the drum, or that such a tall chime may be integrally molded in a drum in a single blow molding operation as in the claimed invention. As a result, Applicant respectfully requests that the Examiner withdraw the rejections of independent claims 1, 6 and 11 and all claims dependent therefrom.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Respectfully submitted,



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauworth	2267.398US03	6639

7590

02/25/2004

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EXAMINER

CASTELLANO, STEPHEN J

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MAR 01 2004

PATTERSON, THUNTE, SKAAR
& CHRISTENSEN, P.A.

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Please find below and/or attached an Office communication concerning this application or proceeding.

Date of Final Office Action 2-25-04
Two month petition due 4-25-04
Response to or appeal from final action due 5-25-04
Per 1 month extension 6-25-04
Per 2 month extension 7-25-04
Per 3rd & FINAL extension 8-25-04

Office Action Summary

Application No.

09/960,606

Applicant(s)

RAUWORTH ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 16 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Newly submitted claim 16 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 16 is directed to a combination of stackable drums.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 16 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stackable drums of claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim 16 is objected to because there is no drawing representation of the stackable drums.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention. The application doesn't have support for "a single blow molding operation." For claim 16, there is no support for stackable drums. **This is a new matter rejection.**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla ('049)(Przytulla) and Hammes ('122)(Hammes).

McKenzie discloses a plastic molded drum having a bung opening, the drum comprising a side wall, top structure and bottom structure, all integrally molded; the top structure comprising a chime (sleeve 12) having a top edge extending circumferentially around and radially outward with respect to the top wall, the chime is integrally molded in a separate operation than the top wall and side wall, there are no welded portions connecting the chime with the top wall or the side wall, and there are no welded portions connecting the top wall and the side wall, wherein the distance from the top of the first fitting to the top edge of the chime is sufficient such that components extending 1 ¼ inches above the top of the first fitting is (are) below the top edge of the chime (see total height of 20 inches and volume of 55 liters in column 5, lines 45-46). A container of this height with the height of the chime as drawn in relation to the height of the top of the first fitting appears to be at least 1 ¼ inches higher.

McKenzie discloses the invention except for the cylindrical side wall and a one-piece integrally molded structure molded in a single blow molding operation. Przytulla and Hammes both teach a cylindrical side wall and a one-piece integrally molded structure molded in a single

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blow molding operation. It would have been obvious to modify the shape of the side wall to be cylindrical as a matter of design choice in sacrificing the packing efficiency of rectangular in cross section side walls for cylindrical side walls which have less corner surfaces on their interior allowing faster and easier cleaning. It would have been obvious to blow mold the structure into one-piece in a single operation as a matter of design choice to take advantage of a design requiring no assembly of separate parts and a design which can be manufactured in a single operation eliminating multiple stages of manufacturing requiring storage, part inventories and multiple machines to perform each stage of manufacturing.

In the event that the rejection is not sustained due to a lack of disclosure of a 1 1/4 inch height difference between the top edge of the chime and the top of the first fitting, it would have to modify this height by engineering design choice as an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack.

Re claim 3, Przytulla and Hammes teach a bottom chime. It would have been obvious to add a bottom chime to prevent damage to the bottom structure and to avoid ruptures and spills due to this damage.

Note that: The admitted prior art in this application includes Fig. 1, 3-6 and any portions of the written specification which refer to these figures.

Claims 4, 5, 8, 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla and Hammes as applied to claims 1 and 6 above, and further in view of the admitted prior art within this application (the admitted prior art).

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For claims 4, 5, 9 and 14, McKenzie discloses a closure 29. The combination discloses the invention except for the closure having a vent outlet and a vent valve and a cover extending over the vent outlet and valve. Admitted prior art as shown in Fig. 5 teaches a venting closure 100 having a vent outlet 106 and a vent valve 104 and a cover 108. It would have been obvious to replace the closure of McKenzie with the closure 100 and cover 108 as motivated by the need for a closure with pressure relieving capability so that damage or an explosion doesn't occur due to excessive pressure.

For claims 8 and 11-15, McKenzie discloses a closure 29 but lacks a showing of a drum insert and closure. The combination discloses the invention except for the drum insert and a closure attached to the drum insert. Admitted prior art as shown in Fig. 1, 3 and 4 teach a drum insert 54 having components 56, 78, 85, 86, 87, 89 and 98 and a related closure 60 having components 88, 90, 92 and 94. It would have been obvious to replace the closure of McKenzie with the drum insert and closure as motivated by the need to attach a multiple port bung connector allowing the contents of the drum to be suctioned or siphoned from the interior through tube 56 in an upright configuration without having to insert a tube or add another fitting with a tube and then detach the tube or fitting upon completion of the discharge process as motivated by the time savings accomplished therein.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 are rejected under the judicially created doctrine of double patenting over claims 1-18 of U. S. Patent No. 6,045,000 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A plastic molded drum having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure, all integrally molded.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Applicant's arguments filed February 2, 2004 have been fully considered but they are not persuasive. Przytulla '049 teaches a protective chime. Even though the chime is characterized as a carrying and transporting ring, the ring and the attachment structure absorb detrimental bending forces on the ring owing to the weight of stacked drums (see column 2, lines 15-19 and 35-42).

The terminal disclaimer filed on February 9, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the full statutory term of prior US Patent No. 6,045,000 has been reviewed and is NOT accepted.

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The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34

(a). See 37 CFR 1.321(b) and/or (c).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Application/Control Number: 09/960,606

Page 8

Art Unit: 3727

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc

Notice of References Cited	Application/Control No. 09/960,606		Applicant(s)/Patent Under Reexamination RAUWORTH ET AL.	
	Examiner Stephen J. Castellano		Art Unit 3727	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-4,228,122	10-1980	Hammes, Theo	264/534
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2267.398US03

Barry L. Rauworth et al.

Application No.: 09/960,606

Examiner: Stephen J. Castellano

Filed: September 21, 2001

Group Art Unit: 3727

For: BLOW MOLDED DRUM

AMENDMENT AFTER FINAL

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

In response to the Office Action of February 25, 2004, amendment to the above-identified patent application is requested.

The present amendment comprises the following sections:

A. Amendments to the Claims

B. Remarks

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

April 22, 2004
Date of Deposit

Bradley J. Thorson
Bradley J. Thorson

AMENDMENTS TO THE CLAIMS

A detailed listing of all claims that are, or were, in the present application, irrespective of whether the claim(s) remains under examination in the application are presented below. The claims are presented in ascending order and each includes one status identifier. Those claims not cancelled or withdrawn but amended by the current amendment utilize the following notations for amendment: 1. deleted matter is shown by strikethrough; and 2. added matter is shown by underlining.

1. (Currently Amended) A plastic molded drum having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure, all integrally molded;

the top structure comprising a top wall and a top chime having a top edge extending circumferentially around, upwardly, and radially outward with respect to said top wall, the top wall comprising an integrally molded recessed portion, the top structure further comprising an upwardly extending first fitting integrally molded with the recessed portion and extending therefrom, the first fitting having a first neck portion and adapted to receive components including a closure;

wherein at least the top chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the top chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

wherein the distance from the top of the first fitting to the top edge of the top chime is sufficient such that components extending 1 and $\frac{1}{4}$ inches above the top of the first fitting [[is]] are below the top edge of the top chime; and

wherein the drum is made by a process comprising blow molding at least the cylindrical wall, the top wall, and the top chime together in a single blow molding operation.

2. (Previously Presented) The plastic molded drum of claim 1 wherein the recessed portion is localized around the first fitting.

3. (Previously Presented) The plastic molded drum of claim 1, further comprising a bottom chime integrally molded so that there are no welded portions connecting the bottom chime with

the bottom wall or the cylindrical wall, and wherein the process for making the drum includes blow molding the bottom chime together with the cylindrical wall, the top wall, and the chime.

4. (Previously Presented) The plastic molded drum of claim 1 wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

5. (Previously Presented) The plastic molded drum of claim 4 further comprising a cover extending over the vent outlet, and vent valve.

6. (Previously Presented) A combination blow molded plastic drum, and closure, the plastic molded drum comprising, a cylindrical wall, a top structure, and a bottom structure;

the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting extending from the recessed portion, and an upwardly extending chime with a top edge; wherein at least the chime, the top wall, and the cylindrical wall are integrally molded in one piece in a single blow molding operation, so that the chime is not part of a separate body attached to the top wall or the cylindrical wall, so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall;

the closure engageable with the first fitting to secure the closure in place on the drum;

the chime extending above the recessed portion 1 ½ to 2 ¾ inches; and

the distance between the top of the first fitting and the top edge of the chime being at least 1 and ¼ inches.

7. (Original) The combination of claim 6, wherein the recessed portion is localized around the first fitting.

8. (Original) The combination of claim 6, wherein the closure is attached to a drum insert with the drum insert attached to the first fitting.

9. (Original) The combination of claim 6, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

10. (Previously Presented) The combination of claim 6, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upwardly extending chime.

11. (Previously Presented) A blow molded plastic drum made by a process comprising the step of blow molding said drum in a single blow molding operation as a one-piece, integrally molded body including a cylindrical wall, a top structure, and a bottom structure, the top structure comprising a top wall, an integral recessed portion, an upwardly extending first fitting adapted to receive a drum insert with a closure, and an upwardly extending chime for protecting the drum insert and closure from physical contact, the chime having a top edge, the top edge of the chime extending at least 1 ¼ inches above the top of the first fitting.

12. (Previously Presented) The drum of claim 11, wherein the recessed portion is localized around the first fitting.

13. (Previously Presented) The drum of claim 11, wherein the recessed portion extends substantially throughout the top wall.

14. (Previously Presented) The drum of claim 11, wherein the closure comprises a vent outlet and a vent valve for relieving pressure within the drum.

15. (Previously Presented) The drum of claim 11, wherein the first fitting extends from the recessed portion a distance not more than substantially one half the vertical distance between the recessed portion and the top edge of the upwardly extending chime.

16. (Cancel)

REMARKS

By this Amendment, claim 1 is amended for grammatical purposes and claim 16 is canceled without prejudice or disclaimer. Claims 1-15 are pending for examination.

Rejections Under 35 U.S.C. § 112

In the Office Action of February 25, 2004, claims 1-16 were rejected as not in compliance with the written description requirement of 35 U.S.C. § 112, in that the application “doesn’t have support for ‘a single blow molding operation’”. Applicant respectfully traverses this rejection and in response directs the Examiner’s attention to the second paragraph of page 7 of the application as filed, wherein U.S. Patent No. 4,228,122 to Hammes is incorporated by reference. The Manual of Patent Examining Procedure states:

Instead of repeating some information contained in another document, an application may attempt to incorporate the content of another document or part thereof by reference to the document in the text of the specification. The information incorporated is as much a part of the application as filed as if the text was repeated in the application, and should be treated as part of the text of the application as filed.

M.P.E.P. § 2163.07(b). As the Examiner notes in the Office Action, “Hammes . . . teach[es] a cylindrical side wall and a one-piece integrally molded structure molded in a single blow molding operation.” Clearly, based on the incorporation by reference of Hammes ‘122, the Applicant had possession of “a single blow molding operation” at the time the application was filed. As a result, Applicant respectfully requests that this rejection be withdrawn.

As for claim 16, which was also rejected under 35 U.S.C. § 112 as not having written description support for “stackable drums,” Applicant directs the Examiner’s attention to the last paragraph of page 2 of the application as filed, wherein it states: “[t]he chime at the top of the drum also provides protection to the top ports and connectors, particularly when the drums are stacked.” Clearly, at the time the present application was filed, Applicant was in possession of the concept that drums may be, and often are, stacked. Thus, Applicant submits the application

as filed has written description support for “stackable drums.” Solely to advance the prosecution of this application and without prejudice or disclaimer of any sort, Applicant has canceled claim 16. As a result, Applicant respectfully submits that this rejection is moot, and requests that it be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1-3, 6, 7 and 10 were rejected as obvious over McKenzie ‘570 in view of Przytulla ‘049 and Hammes ‘122. Applicant respectfully traverses these rejections.

With regard to McKenzie ‘570, Applicant submits that McKenzie ‘570 does not teach or suggest a protective chime, but instead discloses a sleeve 12 with handles that is separately attached to the top of the drum to receive another drum for stacking. The bottom of the upper drum fits within the sleeve and rests on the upper wall of the container below. See McKenzie ‘570 at column 3, line 58 through column 4, line 15. A recess is provided in the bottom of the upper container to receive the closure member of the lower container. See Id. at column 4, line 16 through 27.

McKenzie ‘570 teaches away from the protective chime of the present invention by teaching the insertion of the bottom of another drum within sleeve 12, where it may contact and damage a closure member in place on the drum. Such condition would occur, for example, if a top drum in the stack is rotated 180 degrees and inserted into sleeve 12 of a lower drum with recess 17D overlying second opening 26 when a closure 29 is in place on first opening 25.

Further, Applicant respectfully traverses the assertion in the Office Action that McKenzie ‘570 discloses a drum “wherein the distance from the top of the first fitting to the top edge of the chime is sufficient such that components extending 1 ¼ inches above the top of the first fitting is (are) below the top edge of the chime” based on the disclosure in McKenzie ‘570 that the drum may have a total height of 20 inches with a capacity of 55 liters, and on the relative proportions of the drawings. “Patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”

Hockerson-Halberstadt, Inc. v. Avia Group International, Inc., 222 F.3d 951 (Fed. Cir. 2000).

Applicant notes that the disclosure of McKenzie '570 is entirely silent regarding the dimensional relationship between the fitting locations and the top of the sleeve. A teaching or suggestion of such a relationship is not properly gleaned from measurement of the drawings of McKenzie '570, which are not said to be drawn to scale. As a result, Applicant respectfully submits that McKenzie '570 simply does not teach or suggest the unique relationship between the position of the fittings and the top of the tall protective chime of the claimed invention.

Neither Pryztulla '049 nor Hammes '122 contains any teaching or suggestion whatsoever of the positional relationship between fittings on the top of the drum and the top of the chime claimed in the present invention. In fact, Pryztulla '049 teaches that the "carrying and transport ring 2" is to be located below the end face 3 of the drum (Pryztulla '049, col. 3 ll. 17-19), thereby teaching away from locating the top of a chime above the top wall and fittings in the top wall as in the claimed invention. As a result, since the references applied by the Examiner do not teach or suggest all elements of the claimed invention, Applicant respectfully submits that the Examiner has not made out a prima facie case of obviousness based on these references, and requests that the rejections be withdrawn.

Applicant further traverses the assertion that it would have been obvious to provide a 1 ¼ inch height difference between the top edge of the chime and the top of a first fitting as a matter of "engineering design choice as an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack." Applicant notes that stacking stability is merely one of many competing design considerations. No reference has been cited to support an assertion that one of skill in the art would necessarily prefer stacking stability over other design considerations that may counsel the desirability of lower chime heights. In the event this assertion is to form the basis of a rejection of claims, Applicant respectfully requests that the Examiner cite a supporting reference. See M.P.E.P. 2144.03(C).

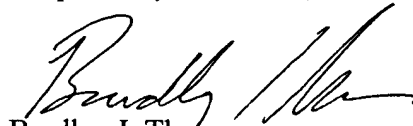
Claims 4, 5, 8, 9, and 11-15 were rejected as obvious over the combination of McKenzie '570, Hammes '122, Prztulla '049 and admitted prior art within the application. Applicant traverses these rejections for the same reasons as fully set forth hereinabove, and respectfully requests they be withdrawn.

Claims 1-15 were rejected for obviousness type double patenting over claims 1-18 of U.S. Patent No. 6,045,000. Applicant submits herewith a terminal disclaimer properly executed by an attorney of record for the common Applicant, and respectfully submits that this terminal disclaimer obviates these rejections.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Although Applicant's March 9, 2004, request for an in-person interview with the Examiner on March 30, 2004, was refused, Applicant urges a discussion if possible to obviate the need for an appeal or reduce the number of issues on appeal in the event that any issues remain to be resolved after this Amendment. Accordingly, the Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauworth	2267.398US03	6639

7590

05/13/2004

Patterson, Thunte, Skaar & Christensen, P.A.
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RECEIVED

MAY 17 2004

PATTERSON, THUNTE, SKAAR
& CHRISTENSEN, P.A.

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

lot
Docketed
pas

Advisory Action

Application No.

09/960,606

Applicant(s)

RAUWORTH ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-15.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.


Stephen J. Castellano
Primary Examiner
Art Unit: 3727

Continuation of 5. does NOT place the application in condition for allowance because: It is noted that Hammes (4,228,122) has been incorporated by reference, neither the text of the original application or Hammes ('122) support "a single blow molding operation" because there is nothing that distinguishes the blow molding operation as being "single" in manner. It is true that the examiner has characterized the blow molding operation of Hammes as being "single," this is only insofar as disclosed by applicant by incorporating Hammes. The engineering design principles regarding stacking stability are well established, the examiner respectfully declines applicant's invitation to provide a supporting reference..

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